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In the United States
Circuit Court of Appeals
For the Ninth Circuit.

WILSON-WESTERN SPORTING GOODS CO.,
a corporation,

Appellant and Cross-Appellee,
vs.

GEORGE E. BARNHART,

Cross-Appellant and Appellee.

Transcript of Record.

Upon Appeal from the District Court of the United States for the
Southern District of California, Central Division.

FILED

MAR 21 1935

PAUL P. SPERREN,
Clerk

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INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	PAGE
Affidavit of George E. Barnhart on Motion to Refer Cause to Special Master.....	26
Amended Praecipe	184
Answer	15
Assignment of Errors of Defendant.....	170
Assignments of Error of Plaintiff.....	180
Bill of Complaint.....	4
Bill of Particulars.....	13
Bond on Appeal of Defendant.....	175
Citation	3
Clerk's Certificate.....	187
Defendant's Exceptions to the Report of the Special Master	160
Defendant's Motion for Bill of Particulars and Extension of Time for Answer.....	10
Decree, Interlocutory.....	164
Exceptions of Defendant to the Report of the Special Master	160
Exceptions of Plaintiff to Report of the Special Master	162
Findings of Fact and Conclusions of Law, Stipulation Adopting Master's Report as.....	163

ii.

	PAGE
Interlocutory Decree.....	164
Motion for Bill of Particulars and Extension of Time for Answer	10
Motion to Refer Cause to Special Master.....	25
Names and Addresses of Attorneys.....	1
Notice and Motion to Refer Cause to Special Master....	25
Notice of Appeal of Defendant.....	174
Notice of Lodgment of Narrative Statement of Testi- mony	148
Notice of Motion for Bill of Particulars.....	11
Notice of Setting.....	29
Order Allowing Appeal of Defendant.....	173
Order Allowing Cross-Appeal of Plaintiff.....	181
Order Approving Bond on Appeal of Defendant.....	176
Order Approving Stipulation Adopting Master's Re- port as Finding of Fact and Conclusions of Law.....	163
Order Extending Time for Answer.....	12
Order of Reference.....	27
Particulars, Bill of.....	13
Petition for Cross-Appeal of Plaintiff.....	178
Petition of Defendant for Appeal.....	168
Plaintiff's Exceptions to Master's Final Report.....	162
Praecipe, Amended.....	184
Reference, Order of.....	27
Report of Special Master.....	148

	PAGE
Statement of Evidence in Narrative Form.....	30
Stipulation re Statement of Evidence in Narrative Form	147
Testimony on Behalf of Plaintiff:	
Barnhart, George E., direct examination.....	31
Cross-examination	38
Redirect examination.....	47
Cross-examination (further).....	49
Direct examination (rebuttal).....	140
Cross-examination	144
Malley, Jack (rebuttal) direct examination.....	131
Cross-examination	133
Testimony on Behalf of Defendant:	
Doble, William A., direct examination.....	81
Cross-examination	107
Redirect examination (recalled).....	134
Recross-examination	136
Redirect examination.....	139
Flynn, Thomas J., direct examination.....	64
Cross-examination	66
Redirect examination.....	67
Recross-examination	68

Statement of Evidence—Continued	PAGE
Gillette, Horace E., direct examination.....	51
Cross-examination	56
Redirect examination.....	60
Recross-examination	62
Redirect examination.....	63
Direct examination (further).....	78
Cross-examination	78
Redirect examination.....	80
Patterson, J. A., direct examination.....	69
Cross-examination	70
Redirect examination.....	75
Recross-examination	77
Redirect examination.....	77
Recross-examination	77
Stipulation Adopting Master's Report as Findings of Fact and Conclusions of Law.....	163
Stipulation Providing for Filing of Original Exhibits with Clerk of Circuit Court of Appeals.....	183
Stipulation Waving Bond on Cross-Appeal.....	182

INDEX TO EXHIBITS.

	PAGE
Plaintiff's:	
Exhibit No. 1—Patent No. 1,639,547, granted to George E. Barnhart, August 16, 1927.....	30
Exhibit No. 2—Patent No. 1,639,548, granted to George E. Barnhart, August 16, 1927.....	30
Exhibit No. 3—Golf Club Sold by Defendant.....	30
Exhibit No. 4—Notice of Infringement.....	32
Exhibit No. 5—Page from November, 1929 issue of "Golfton"	33
Exhibit No. 6—Page from March, 1930, issue of "Golfton"	33
Exhibit No. 7—(No exhibit numbered 7.)	
Exhibit No. 8—Six Catalogs entitled "The Gate- way to Golf"	36
Exhibit No. 9—Letter dated September 19, 1933, from Lyon & Lyon.....	48
Exhibit No. 10—Letter dated April 26, 1930, Wil- son-Western Sporting Goods Company in re- sponse to Notice of Infringement.....	48
Exhibit No. 11—Certificate of Secretary of State re Defendant Doing Business in California.....	48
Exhibit No. 12—Golf Club, marked "Professional Special 101"	143

Defendant's:	PAGE
Exhibit A—Letter dated January 24, 1934, Mr. Lyon to Mr. Graham.....	37
Exhibit B—Golf Club.....	43
Exhibit C—Advertising Circular of American Fork & Hoe Co.....	51
Exhibit D—Certified Copy of File Wrapper of Patent No. 1,639,547.....	51
Exhibit E—Certified Copy of File Wrapper of Patent No. 1,639,548.....	51
Exhibit F—Catalog	52
Exhibit G—Catalog	53
Exhibit H—J. H. or Jock Hutchinson Club.....	54
Exhibit I—Wilson Company's Club, Model 283.....	55
Exhibit J-1—Patent to Robertson, No. 206,264.....	80
Exhibit J-2—Patent to Kavanaugh, No. 603,694.....	80
Exhibit J-3—Patent to Lord, No. 1,249,127.....	80
Exhibit J-4—Patent to Isham, No. 1,435,851.....	80
Exhibit J-5—Patent to Lagerblade, No. 1,444,842..	80
Exhibit J-6—Patent to Treadway, No. 1,531,632....	80
Exhibit J-7—Patent to Heller, No. 1,551,563.....	80
Exhibit J-8—Reissue Patent to Heller, No. 16,808..	81
Exhibit J-9—Patent to Maas, No. 1,553,867.....	81
Exhibit J-10—Patent to Reach, No. 1,601,770.....	81
Exhibit J-11—Patent to Mattern, No. 1,605,552.....	81
Exhibit J-12—Patent to Pryde, No. 1,615,232.....	81
Exhibit J-13—British Patent to Saunders, No. 3288 of 1913.....	81

INDEX TO BOOK OF EXHIBITS.

PAGES

Plaintiff's Exhibits:

- | | |
|--|---------------|
| Exhibit No. 1—Patent No. 1,639,547,
granted August 17, 1927,
to George E. Barnhart..... | 1 to 6 incl. |
| Exhibit No. 2—Patent No. 1,639,548,
granted August 17, 1927,
to George E. Barnhart..... | 7 to 11 incl. |
| Exhibit No. 4—Notice of infringement
dated April 19, 1930..... | 12 |
| Exhibit No. 5—Page from November,
1929, issue of "Golfdom" | 13 |
| Exhibit No. 6—Page from March, 1930,
issue of "Golfdom"..... | 14 |
| Exhibit No. 7—Page from May 17, 1930,
edition of "Colliers"..... | 15 |
| Exhibit No. 8B—Page 4 of 1930 catalogue
of Wilson-Western Sport-
ing Goods Co., entitled
"The Gateway to Golf",
one of the catalogues in-
troduced in evidence as
Plaintiff's Exhibit 8..... | 16 and 17 |
| Exhibit No. 8C—Page 5 of 1931 catalogue
of Wilson-Western Sport-
ing Goods Co., entitled
"The Gateway to Golf,"
one of the catalogues in-
troduced in evidence as
Plaintiff's Exhibit 8..... | 18 and 19 |

Exhibit No. 8D—Page 5 of 1932 catalogue of Wilson-Western Sporting Goods Co. entitled “The Gateway to Golf”, one of the catalogues introduced in evidence as Plaintiff’s Exhibit 8..... 20 and 21

Exhibit No. 9—Letter dated September 19, 1933, Lyon & Lyon to Frank L. A. Graham..... 22

Exhibit No. 10—Letter of Wilson-Western Sporting Goods Co., dated April 26, 1930..... 23

Exhibit No. 11—Certificate of Secretary of State 24

Defendant’s Exhibits:

Exhibit A—Letter dated January 24, 1934, Lewis E. Lyon to Frank L. A. Graham 25

Exhibit C—Advertising circular of American Fork & Hoe Co., with illustration entitled “True Temper” 26 and 27

Exhibit F—Page 22 of 1925 catalogue of Wilson-Western Sporting Goods Co., distributed by B. H. Dyas & Co..... 28 and 29

Exhibit J-1—Patent No. 206,264, dated July 23, 1878, to J. A. Robertson 30 to 33 incl.

PAGES

Exhibit J-2—Patent No. 603,694, dated May 10, 1898 to Kavanagh....	34 to 36 incl.
Exhibit J-3—Patent No. 1,249,127, dated Decembed 4, 1917, issued to Lard	37 to 42 incl.
Exhibit J-4—Patent No. 1,435,851, dated November 14, 1922, to Isham	43 to 47 incl.
Exhibit J-5—Patent No. 1,444,842, dated February 13, 1923, to Lager- blade	48 to 51 incl.
Exhibit J-6—Patent No. 1,531,632, dated March 21, 1925, to Treadway	52 to 55 incl.
Exhibit J-7—Patent No. 1,551,563, dated September 1, 1925, to Heller..	56 to 59 incl.
Exhibit J-8—Reissue patent No. 16,808, dated December 6, 1927, to Heller	60 to 63 incl.
Exhibit J-9—Patent No. 1,553,867, dated September 15, 1925, to Maas..	64 to 68 incl.
Exhibit J-10—Patent No. 1,601,770, dated October 5, 1926, to Reach, et al.....	69 to 72 incl.
Exhibit J-11—Patent No. 1,605,552, dated November 2, 1926, to Mattern	73 to 77 incl.
Exhibit J-12—Patent No. 1,615,232, dated January 25, 1927, to Pryde, et al.	78 to 81 incl.
Exhibit J-13—British Patent No. 3288, 1913, to Saunders.....	82 to 89 incl.

Names and Addresses of Attorneys.

For Defendant, Appellant and Cross-Appellee:

LYON & LYON, Esqs.,

LEWIS E. LYON, Esq.,

HENRY S. RICHMOND, Esq.,

National City Bank Building,

Los Angeles, California.

For Plaintiff, Cross-Appellant and Appellee:

FRANK L. A. GRAHAM, Esq.,

Subway Terminal Building,

Los Angeles, California.

CITATION.

UNITED STATES OF AMERICA : ss.
TO GEORGE E. BARNHART,

GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held at the City of San Francisco, in the State of California, on the 24th day of November, 1934, pursuant to Notice of Appeal in the Clerk's Office of the District Court of the United States in and for the Southern District of California, in that certain suit in equity wherein you are plaintiff and Wilson-Western Sporting Goods Co., a corporation, is defendant, to show cause, if any there be, why the Interlocutory Decree entered September 24th, 1934, in said cause mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESSETH the Honorable Paul J. McCormick, United States District Judge for the Southern District of California, this 24th day of October, A. D., 1934, and of the Independence of the United States the one hundred fifty-ninth.

Paul J. McCormick
United States District Judge for the
Southern District of California.

Due Service of the foregoing Citation is hereby admitted this 23rd day of October, 1934.

Frank L. A. Graham
Attorneys for Plaintiff

[Endorsed]: Filed Oct 24 1934 R. S. Zimmerman.
Clerk By L. Wayne Thomas Deputy Clerk

CITATION.

UNITED STATES OF AMERICA : ss.

To WILSON-WESTERN SPORTING GOODS
CO., (a corporation).

GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held at the City of San Francisco, in the State of California, thirty (30) days from and after the date this citation bears date, pursuant to Order Allowing Cross-Appeal in the Clerk's Office of the District Court of the United States in and for the Southern District of California, in that certain suit in equity wherein you are defendant and George E. Barnhart is plaintiff, to show cause, if any there be, why the Interlocutory Decree entered September 24th, 1934, in said cause mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESSETH the Honorable Paul J. McCormick, United States District Judge for the Southern District of California, this 24th day of October, A. D., 1934, and of the Independence of the United States the one hundred fifty-ninth.

Paul J. McCormick
United States District Judge for the
Southern District of California.

Due Service of the foregoing Citation is hereby admitted this 24th day of October, 1934.

Lyon & Lyon
Henry S. Richmond
Attorney for Defendant

[Endorsed]: Filed Oct. 24, 1934 R. S. Zimmerman,
Clerk By Edmund L. Smith, Deputy Clerk.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

GEORGE E. BARNHART,)	
	)	NO. 26-M
Plaintiff,	)	IN EQUITY
)	
vs.)	
	)	Infringement of
WILSON-WESTERN SPORTING	)	Patents Nos.
GOODS CO., a corporation,	)	1,639,547 and
	)	1,639,548
Defendant.)	

BILL OF COMPLAINT

Comes now GEORGE E. BARNHART, a citizen of the United States and a resident of the City of Pasadena in the State of California, and brings his Bill of Complaint against WILSON-WESTERN SPORTING GOODS CO., and for cause of action alleges:

I.

That plaintiff GEORGE E. BARNHART is a citizen of the United States, residing in the City of Pasadena, County of Los Angeles, State of California.

II.

That defendant WILSON-WESTERN SPORTING GOODS CO. is a corporation organized and existing under and by virtue of the laws of the State of Maine, and has a place of business at Los Angeles in the State of California within the Southern District of California. Central Division thereof.

III.

That the ground upon which this Court's jurisdiction depends is that this is a suit in equity arising under the patent laws of the United States.

IV.

That heretofore, to wit: prior to October 14, 1926, GEORGE E. BARNHART, then of Pasadena, California, was the original, first and sole inventor of a new and useful invention, to wit: a golf club, not known or used by others before his invention or discovery thereof or patented or described in any printed publication in the United States of America or in any foreign country before his invention or discovery thereof, or more than two (2) years prior to his application for Letters Patent therefor in the United States of America, or in public use or on sale in the United States for more than two (2) years prior to such application for Letters Patent therefor, and not abandoned.

That thereupon, to wit: on October 14, 1926, said GEORGE E. BARNHART made application in writing in due form of law to the Commissioner of Patents of the United States of America for Letters Patent for said invention and complied in all respects with the conditions and requisites of the said law.

V.

That after due proceedings had and due examination made by the Commissioner of Patents upon the aforesaid application as to the patentability of such invention, on August 16, 1927, Letters Patent for the United States, numbered 1,639,547, signed, sealed and executed in due form of law, and bearing date the day and year aforesaid, were granted, issued and delivered by the Commis-

sioner of Patents of the United States of America to the said GEORGE E. BARNHART whereby there was granted and secured to plaintiff GEORGE E. BARNHART, his heirs, legal representatives and assigns for the full term of seventeen (17) years from and after said August 16, 1927, the exclusive right and liberty of making, using and vending to others to be used, said invention throughout the United States of America and the territories thereof, all as will more fully and at large appear in and by said original Letters Patent, a duly certified copy of which will be in court produced as may be required.

VI.

That heretofore, to wit: prior to November 23, 1926, GEORGE E. BARNHART, then of Pasadena, California, was the original, first and sole inventor of a new and useful invention, to wit: a golf club, not known or used by others before his invention or discovery thereof or patented or described in any printed publication in the United States of America or in any foreign country before his invention or discovery thereof, or more than two (2) years prior to his application for Letters Patent therefor in the United States of America, or in public use or on sale in the United States for more than two (2) years prior to such application for Letters Patent therefor, and not abandoned.

That thereupon, to wit: on November 23, 1926, said GEORGE E. BARNHART made application in writing in due form of law to the Commissioner of Patents of the United States of America for Letters Patent for said invention and complied in all respects with the conditions and requisites of the said law.

VII.

That after due proceedings had and due examination made by the Commissioner of Patents upon the aforesaid application as to the patentability of such invention, on August 16, 1927, Letters Patent for the United States, numbered 1,639,548, signed, sealed and executed in due form of law, and bearing date the day and year aforesaid, were granted, issued and delivered by the Commissioner of Patents of the United States of America to the said GEORGE E. BARNHART whereby there was granted and secured to plaintiff GEORGE E. BARNHART, his heirs, legal representatives and assigns for the full term of seventeen (17) years from and after said August 16, 1927, the exclusive right and liberty of making, using and vending to others to be used, said invention throughout the United States of America and the territories thereof, all as will more fully and at large appear in and by said original Letters Patent, a duly certified copy of which will be in court produced as may be required.

VIII.

That by virtue of the premises plaintiff became and now is the sole and exclusive owner of the said inventions and Letters Patent Nos. 1,639,547 and 1,639,548, and of all rights in, to and under the same, including all rights of recovery for past infringement thereof.

IX.

That the invention set forth, described and claimed in said Letters Patent Nos. 1,639,547 and 1,639,548 are of great utility and, if plaintiff can receive lawful protection

against infringers, said Letters Patent will be of great value and benefit to him and great profits and advantages will accrue to him therefrom.

X.

Defendant, well knowing the premises and in violation of the rights of the plaintiff, after notice in writing of plaintiff's exclusive rights under said Letters Patent Nos. 1,639,547 and 1,639,548, and of the defendant's infringement thereof, without authority under said Letters Patent or otherwise, and subsequent to the grant of the said respective Letters Patent and prior to the commencement of this suit, and within the past six (6) years, within the Central Division of the Southern District of California, and elsewhere within the United States, has wrongfully, wantonly and continuously infringed said Letters Patent Nos. 1,639,547 and 1,639,548 by making, selling and using, and causing to be made, sold and used, golf clubs embodying and containing the inventions patented in and by said Letters Patent Nos. 1,639,547 and 1,639,548, and is still so doing and is threatening so to do in the immediate future and during the term of the said Letters Patent.

Though requested to desist from said infringement, defendant refuses so to do, whereby plaintiff has been and still is being and will be, so long as such infringement continues, greatly and irreparably damaged and injured and deprived of the gains, profits, benefits and advantages which he would otherwise make and receive under said Letters Patent, and defendant has made and received and is making and receiving by such infringement large and

continuous profits, benefits and advantages which belong to plaintiff, the amount and extent of which plaintiff cannot ascertain except by the accounting herein prayed.

WHEREFORE, and because without adequate remedy except in this court of equity, plaintiff prays an injunction restraining and enjoining the defendant, its officers, agents, servants, employees and attorneys, and those in active concert or participating with them, from making, selling and using, or causing to be made, sold and used, the inventions patented in and by said Letters Patent Nos. 1,639,547 and 1,639,548; that said Letters Patent Nos. 1,639,547 and 1,639,548 may be declared to be valid and plaintiff to be the sole and lawful owner thereof and of all rights in, to and under the same; that this cause be referred to a Master to take and state an accounting of the profits, gains, advantages and damages accruing by reason of the said infringement; that said Master may be given all the powers conferred on Masters by law and the rules in equity; that plaintiff may have judgment for the profits, gains, advantages and damages so found and the costs of this suit, and that plaintiff may have such other and further relief as to this Court may be deemed just and proper.

George E. Barnhart

Plaintiff.

Frank L. A. Graham

Attorney for Plaintiff

[Endorsed]: Filed Jul. 11, 1933. R. S. Zimmermann
Clerk By Thomas Madden, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

DEFENDANT'S MOTION FOR BILL OF PARTICULARS AND EXTENSION OF TIME FOR ANSWER

Now comes the defendant, WILSON-WESTERN SPORTING GOODS CO., a corporation of Maine, by its solicitors, and moves this Court for an order :

(1) Directing the plaintiff to serve and file a bill of particulars:

(a) specifying which claim or claims of each of the Letters Patent alleged in the Bill of Complaint to be infringed are charged to be infringed by the defendant;

(b) with respect to each of the patents in suit, identifying by filing of a specimen, by reference to catalogue number and date or by drawing, including a longitudinal section, the golf club or clubs alleged in the Bill of Complaint to be infringed by the defendant.

The ground for Particular (b) above is that, as stated in the attached affidavit of David Levinson, the defendant has within the last six years catalogued thousands of different golf clubs of varying constructions, and the defendant is without knowledge of which of these the plaintiff alleges to infringe said Letters Patent.

WILSON-WESTERN SPORTING GOODS CO.

By Williams, Bradbury, McCaleb & Hinkle

Solicitors

Lyon & Lyon

Frederick S. Lyon

Leonard S. Lyon

Lewis E. Lyon

Attorneys for defendant

[Endorsed]: Filed Aug. 17, 1933. R. S. Zimmerman, Clerk By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

NOTICE OF MOTION

TO Plaintiff, GEORGE E. BARNHART, and to
FRANK L. A. GRAHAM, Esq., his attorney:

You and each of you will please take notice that on Tuesday, September 5, 1933, at the hour of 10:00 o'clock A. M., or as soon thereafter as counsel can be heard, in the court room of the above entitled court in the Post Office and Federal Building, Los Angeles, California, before the Honorable Paul J. McCormick, defendant will bring on for hearing its Motion for a Bill of Particulars.

Lyon & Lyon

Leonard S. Lyon

Lewis E. Lyon

Attorneys for Defendant.

[Endorsed]: Filed Aug. 17, 1933. R. S. Zimmerman,
Clerk By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ORDER EXTENDING TIME.

Defendant having filed its motion for Bill of Particulars herein, and having noticed its motion for Bill of Particulars for September 5, 1933, and good cause therefor appearing,

IT IS HEREBY ORDERED that the time within which defendant may file its answer or otherwise plead to the Bill of Complaint herein be extended for a period of thirty days from and after the date upon which the Bill of Particulars of plaintiff provided for herein shall have been served and filed, or thirty days from and after the date upon which defendant's motion for Bill of Particulars shall have been denied.

Paul J. McCormick
United States District Judge

Dated: August 17th, 1933.

[Endorsed]: Filed Aug. 17, 1933. R. S. Zimmerman,
Clerk By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

BILL OF PARTICULARS

Now comes plaintiff GEORGE E. BARNHART and for his Bill of Particulars states as follows:

I.

(a) The claims relied on and which plaintiff charges to have been infringed by the defendant are as follows:

Patent No. 1,639,547

Claims No, 11, 12, 13 and 15.

Patent No. 1,639,548

Claim No. 10.

(b) The golf clubs charged to infringe, in so far as plaintiff is informed at this time, are illustrated in catalogs of the defendant hereinafter referred to, wherein those clubs, illustrated on the pages referred to, infringe both the patents in suit:

1930 Edition, "Gateway to Golf," pages 4, 6, 8, 11 and 14;

1931 Edition, "Gateway to Golf," pages 5, 6, 7, 9, 10, 14, 16 and 18;

1932 Edition, "Gateway to Golf," pages 5, 6, 7, 10, 14, 16, 46 and 50. On such last mentioned page those referred to as "Bomber Iron."

1933 Edition, "Gateway to Golf," pages 6, 11, 13, 18, 19, 23, 33, 34, 36, 50 and 53. On such page 53 the club being marked "Bomber Iron."

The above numbered paragraphs correspond in number to the numbered paragraphs of the Motion for Bill of Particulars.

Dated at Los Angeles, California, this 23rd day of September, 1933.

GEORGE E. BARNHART,
By Frank L A Graham
His Attorney.

[Endorsed]: Received copy of the within Bill of Particulars this 25th day of September 1933 Lyon & Lyon Lewis E Lyon Attorneys for Defendant Filed Sep. 25, 1933. R. S. Zimmerman, Clerk By L. Wayne Thomas, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ANSWER

Now comes the above named defendant, by its attorneys, and for answer to the bill of complaint herein, says:

1. In answer to paragraph I of the bill of complaint, defendant is without knowledge as to any of the allegations thereof, and therefore denies the same.

2. In answer to paragraph II of the bill of complaint, defendant admits that it is a corporation of the State of Maine, and has a place of business at Los Angeles, in the State of California, within the Southern District of California, Central Division thereof.

3. In answer to paragraph III of the bill of complaint, defendant admits that this is a suit in equity charging infringement of United States Letters Patent, but denies that there is any cause for action as therein charged, and therefore denies the jurisdiction of this court.

4. In answer to paragraph IV of the bill of complaint, defendant denies that prior to October 14, 1926, or at any time, George E. Barnhart, then of Pasadena, California, was the original, first, or sole inventor of any new or useful invention, or, to-wit, a golf club, denies that said alleged invention was not known or used by others before his alleged invention or discovery thereof, denies that it was not patented or described in any printed publication in the United States of America, or in any foreign country before his alleged invention or discovery thereof, or more than two years prior to the alleged application for Letters Patent therefor in the United States of America, denies that said alleged invention was not in public use or on sale in the United States for more than two years prior to such application for Letters Patent therefor, and denies that the same had not been abandoned. Defendant

admits, on information and belief, that on or about October 14, 1926, one George E. Barnhart made application in writing to the Commissioner of Patents of the United States of America for Letters Patent, but denies that said application was in due form of law, denies that said application was for any invention, and denies that the said George E. Barnhart complied in all or any respects with the conditions and requisites of the said law.

5. In answer to paragraph V of the bill of complaint, defendant admits that on August 16, 1927, Letters Patent for the United States, numbered 1,639,547, signed, sealed, and executed in due form of law, and bearing date the day and year aforesaid, were granted and delivered by the Commissioner of Patents of the United States of America, to one George E. Barnhart, and that there was thereby purported to be granted and secured to George E. Barnhart, his heirs, legal representatives, and assigns, for the full term of seventeen (17) years from and after said August 16, 1927, the exclusive right and liberty of making, using, and vending to others to be used, said alleged invention throughout the United States of America and the territories thereof, but defendant denies that said Letters Patent were issued after due proceedings had, or after due examination by the Commissioner of Patents of the application therefor, and denies that said Letters Patent are good and valid in law, or that they grant any exclusive right or rights to plaintiff, George E. Barnhart.

6. In answer to paragraph VI of the bill of complaint, defendant denies that prior to November 23, 1926, or at any time, George E. Barnhart, then of Pasadena, California, was the original, first, or sole inventor of any new or useful invention, or, to-wit, a golf club, denies that said alleged invention was not known or used by others before his alleged invention or discovery thereof, denies

that it was not patented or described in any printed publication in the United States of America, or in any foreign country before his alleged invention or discovery thereof, or more than two years prior to the alleged application for Letters Patent therefor in the United States of America, denies that said alleged invention was not in public use or on sale in the United States for more than two years prior to such application for Letters Patent therefor, and denies that the same had not been abandoned. Defendant admits, on information and belief, that on or about November 23, 1926, one George E. Barnhart made application in writing to the Commissioner of Patents of the United States of America for Letters Patent, but denies that said application was in due form of law, denies that said application was for any invention, and denies that the said George E. Barnhart complied in all or any respects with the conditions and requisites of the said law.

7. In answer to paragraph VII of the bill of complaint, defendant admits that on August 16, 1927, Letters Patent for the United States, numbered 1,639,548, signed, sealed, and executed in due form of law, and bearing date the day and year aforesaid, were granted and delivered by the Commissioner of Patents of the United States of America, to one George E. Barnhart, and that there was thereby purported to be granted and secured to George E. Barnhart, his heirs, legal representatives, and assigns, for the full term of seventeen (17) years from and after said August 16, 1927, the exclusive right and liberty of making, using, and vending to others to be used, said alleged invention throughout the United States of America and the territories thereof, but defendant denies that said Letters Patent were issued after due proceedings had, or after due examination by the Commissioner of Patents

of the application therefor, and denies that said Letters Patent are good and valid in law, or that they grant any exclusive right or rights to plaintiff, George E. Barnhart.

8. In answer to paragraph VIII of the bill of complaint, defendant is without knowledge as to the allegations thereof, and therefore denies the same.

9. In answer to paragraph IX of the bill of complaint, defendant denies that any inventions are set forth, described, or claimed in Letters Patent Nos. 1,639,547 and 1,639,548, and denies that the alleged inventions set forth, described, and claimed therein, are of great or any utility; defendant denies that if plaintiff can receive lawful protection against infringers, said Letters Patent will be of great or any value or benefit to him, or that great or any profits or advantages will accrue to him therefrom. Defendant is without knowledge as to whether there are any infringers thereof, but denies that this defendant is infringing either of said Letters Patent.

10. In answer to paragraph X of the bill of complaint, defendant denies that it well knows the premises; defendant denies that it has violated any rights of the plaintiff; defendant denies that it has received notice in writing of plaintiff's alleged exclusive rights under said Letters Patent Nos. 1,639,547 and 1,639,548, or of defendant's alleged infringement thereof, and denies that without authority under said Letters Patent, or otherwise, and subsequent to the grant of said respective Letters Patent, and prior to the commencement of this suit, and within the past six years, or any time, within the Central Division of the Southern District of California, or elsewhere within the United States of America, it has wrongfully, wantonly, continuously, or in any manner infringed said Letters Patent Nos. 1,639,547, or 1,639,548, by mak-

ing, selling, or using, or causing to be made, sold, or used, golf clubs embodying or containing the alleged inventions purporting to be patented in and by said Letters Patent Nos. 1,639,547 or 1,639,548, and denies that it is still infringing or is threatening to infringe in the immediate future, or at any time during the terms of said Letters Patent.

Defendant denies that it has been requested to desist from said alleged infringement, but denies that it refuses so to do and denies that plaintiff has been, still is being, or will be greatly or irreparably damaged or injured or deprived of any gains, profits, benefits, or advantages which he might otherwise or in any manner make or receive under said Letters Patent, or either of them, by reason of any act of this defendant. Defendant denies that it has made or received, or is making or receiving by such alleged infringement, large or continuous or any profits, benefits, or advantages which belong to plaintiff; denies that it has committed any such act of infringement, and denies that plaintiff is entitled to an accounting herein.

11. Defendant denies that plaintiff is entitled to any of the relief prayed for in the bill of complaint.

12. Defendant further denies each and every allegation of the bill of complaint not herein admitted, controverted, or specifically denied.

13. Relative to plaintiff's bill of particulars heretofore filed herein, defendant denies that it in any way infringes claims 11, 12, 13, and 15, or any other claim of patent No. 1,639,547, and denies that it in any way infringes claim No. 10, or any other claim, of patent No. 1,639,548.

14. For a further and separate defense, defendant alleges upon information and belief, that each of the aforesaid claims of the patents specified in said bill of complaint, is invalid, void, and of no effect, for the reason that the applicant therefor surreptitiously and unjustly obtained the patent for that which was in fact invented by another, if any invention be involved therein, who was using reasonable diligence in adapting and perfecting the same.

15. Defendant further alleges, upon information and belief, that each of the aforesaid claims of the patents specified in the bill of complaint, is invalid, void, and of no effect, because for the purpose of deceiving the public, the description and specification filed in the Patent Office by the applicant therefor in each case was made to contain less than the whole truth relative to the said alleged invention or discovery, or more than was necessary to produce the desired effect.

16. Defendant further alleges, upon information and belief, that the aforesaid claims of the alleged Letters Patent charged to be infringed by this defendant, and each of them, are invalid, void, and of no effect for the following reasons:

(a) That the devices described and claimed in each of said claims, respectively, or material and substantial parts thereof, were patented or described in printed publications prior to the alleged invention or discovery thereof, by the applicant therefor, or more than two years prior to the respective applications for Letters Patent therefor, as follows:

BARNHART PATENT NO. 1,639,547(Claims 11, 12, 13, and 15)

United States

<u>Patent Number</u>	<u>Patentee</u>	<u>Date Issued</u>
206,264	Robertson	July 23, 1878
270,460	Mitchell	January 9, 1883
603,394	Kavanaugh	May 10, 1898
887,753	Beck	May 19, 1908
1,232,816	Lard	July 10, 1917
1,435,851	Isham	November 14, 1922
1,444,842	Lagerblade	February 13, 1923
1,531,632	Treadway	March 31, 1925
1,551,563	Heller	September 1, 1925
1,601,770	Reach, et al.	October 5, 1926
1,615,232	Pryde, et al.	January 25, 1927
1,665,811	Hadden	April 10, 1928

(Filing date in Great Britain
August 16, 1926)

British 30,050	Scott	December 31, 1912
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BARNHART PATENT NO. 1,639,548(Claim 10)

United States

<u>Patent Number</u>	<u>Patentee</u>	<u>Date Issued</u>
206,264	Robertson	July 23, 1878
1,435,851	Isham	October 14, 1922
1,551,563	Heller	September 1, 1925
1,553,867	Maas	September 15, 1925
1,601,770	Reach, et al.	October 5, 1926
1,605,552	Mattern	November 2, 1926
British 11,893	Cole	May 24, 1902

and also in other patents and printed publications, the names, numbers, dates, and authors of which are not at present known to defendant, but which when ascertained, defendant prays leave to add hereto.

(b) That the applicant for each of said alleged Letters Patent was not the original, and first inventor or discoverer of the thing patented thereby, or of any material and substantial part thereof, but that prior to the alleged invention thereof by said applicant of each of said alleged patents, each was, if invention be involved therein, invented by and/or known to the parties cited below, viz.:

The patentees listed in paragraph (a) hereof, whose respective patents were granted two or more years prior to the respective applications for the alleged Letters Patent herein charged to be infringed, at the addresses given in their respective patents and applications therefor,

and also by others not now known by defendant, but which when ascertained, defendant prays leave to add hereto.

(c) That more than two years prior to the filing of the respective applications for said alleged Letters Patent, the alleged inventions thereof had been in public use and on sale in the United States, by the parties cited below, viz.:

The patentees listed in paragraph (a) hereof, whose respective patents were granted two or more years prior to the respective applications for the alleged Letters Patent herein charged to be infringed, at the addresses given in their respective patents and applications therefor,

and also by others not now known by defendant, but which when ascertained, defendant prays leave to add hereto.

17. Defendant further alleges, upon information and belief, that said Letters Patent, and particularly the claims thereof herein charged to be infringed, and each of them, are ambiguous, indefinite, and do not set forth any invention in such full, clear, concise, and exact terms as to enable persons skilled in the art to make, construct, or use the same.

18. Defendant further alleges, upon information and belief, that said Letters Patent, and particularly the claims thereof herein charged to be infringed, and each of them, are null, void and of no effect, for the reason that they do not set forth a device which can be put into practical or any use.

19. Defendant further alleges, upon information and belief, that said Letters Patent, and particularly the claims thereof herein charged to be infringed, and each of them, are so restricted and limited in scope by the proceedings in the Patent Office prior to the issuance of said Letters Patent; that such claims, and each of them, if valid at all, are not entitled to any construction which will include or cover any device made, sold, or used by this defendant; wherefore defendant denies infringement of any of the claims of said Letters Patent.

20. Defendant further alleges, upon information and belief, that the state of the prior art existing at the time of the said alleged invention set forth in the claims of

each of the Letters Patent charged to be infringed by this defendant, was such that the alleged improvements set forth therein did not involve invention, but represented at most, the exercise of mere mechanical skill.

21. Defendant further alleges, upon information and belief, that the claims of each of the Letters Patent herein charged to be infringed, cover mere aggregations and not new patentable combinations, and are therefore invalid under the law.

Having answered plaintiff's bill of complaint in so far as defendant is advised it is necessary or material to be answered, this defendant prays to be hence dismissed, with its reasonable charges in this behalf most wrongfully sustained.

WILSON-WESTERN SPORTING GOODS CO.

By Williams, Bradbury, McCaleb & Hinkle,
Lyon & Lyon

Solicitors for Defendant.

Albert G. McCaleb

J. David Dickinson

Leonard S. Lyon

Lewis E. Lyon

Counsel for Defendant.

[Endorsed]: Filed Oct 26, 1933. R. S. Zimmerman
Clerk By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

NOTICE AND MOTION

TO WILSON-WESTERN SPORTING GOODS CO., a corporation, defendant herein, and to LYON & LYON, its attorneys:

YOU, AND EACH OF YOU, will please take notice that plaintiff will move the above entitled Court on Monday, the 2nd day of April, 1934, at the courtroom of said Court, at the hour of 10:00 o'clock A. M., or as soon thereafter as counsel can be heard, to refer the above entitled cause to a Special Master to take and hear the evidence offered by the respective parties and to make his conclusions as to the facts in issue and recommend the judgment to be entered therein, subject to full review by the Court.

This motion will be based upon all of the records, pleadings and files of this cause, and on the affidavit of George E. Barnhart, served herewith.

Dated this 28th day of March, 1934.

Frank L. A. Graham

Attorney for Plaintiff.

POINTS AND AUTHORITIES: Equity Rule 59; Neals, Inc. v. McCormick et al., 19 Fed. (2d) 320; Los Angeles Brush Co. v. James, 272 U. S. 701.

[TITLE OF COURT AND CAUSE.]

AFFIDAVIT OF GEORGE E. BARNHART

STATE OF CALIFORNIA)
) ss.
 COUNTY OF LOS ANGELES)

GEORGE E. BARNHART, being first duly sworn, deposes and says that he resides in Pasadena, County of Los Angeles, State of California; that he is the plaintiff in the above entitled cause; that he is not engaged in the manufacture and sale of golf clubs but seeks to derive benefit from his patented inventions by licensing others to use the said inventions; that the defendant herein is one of the largest manufacturers of golf clubs in the United States and is continuing the infringing acts complained of; that until the determination of the present suit, plaintiff is not in a position to enter into negotiations with others for licensing his inventions under the patents in suit and is thereby irreparably damaged unless speedy determination of the present suit can be had.

Affiant is informed and believes that the above entitled suit is at issue and will be called for setting at the calling of the September calendar; that due to the great number of cases filed prior to this suit and the condition of the calendar as now exists that there seems to be no certainty of a trial date during the present year unless this cause is referred to a Special Master for hearing.

George E. Barnhart.

Subscribed and sworn to before me this 28th day of March, 1934.

[Seal]

Drue L. Hoffman

Notary Public in and for the County of Los Angeles,
 State of California

My Commission Expires June 11, 1934

[Endorsed]: Filed Mar. 28, 1934 R. S. Zimmerman,
 Clerk By L. Wayne Thomas, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ORDER OF REFERENCE

This cause being at issue, and upon motion of counsel for plaintiff that the same be referred to a Special Master to take and hear the evidence offered by the respective parties and to make his conclusions as to the facts in issue and recommend the judgment to be entered therein, subject to full review by the Court, an affidavit in support of such motion having been filed by plaintiff and such motion and such affidavit filed by said plaintiff having been considered; and it appearing that because of the congestion of the Court's calendar there are many other causes entitled to be first heard, including a large number of criminal causes which are entitled to preference over civil matters as to the trial thereof, that the calendar of the Court is already fully set for a period of about six months in advance of this date; and it further appearing that because of the protracted length of patent trials the result has been and is that other civil litigants having causes to be tried have not been accorded a fair proportion of the time of the Court, and it appearing that this condition will continue unless many of the patent cases, including this cause now pending, can be disposed of in the manner herein provided and hence that in order to fairly and within a reasonable time dispose of the business before the Court it is necessary that this order be made;

IT IS THEREFORE ORDERED that this cause be referred to DAVID B. HEAD, ESQUIRE, Special

Master, to take and hear the evidence offered by the respective parties and to make his conclusions as to the facts in issue and recommend the judgment to be entered thereon; the said Special Master DAVID B. HEAD is authorized and empowered to do all things and to make such orders as may be required to accomplish a full hearing on all matters of fact and law in issue in this cause, reserving to the Court the full right and power to review and determine all questions of fact and law upon exceptions to the report of said Special Master by the respective parties, as fully and completely had this reference not been made and as though this cause had been tried before the Court; the objection of counsel for the defendant to the making of this order referring the cause to the Master is hereby noted, and an exception is allowed in favor of the defendant.

Dated this 5th day of April 1934.

Jeremiah Neterer
District Judge.

APPROVED AS TO FORM, AS PROVIDED IN
RULE 44:

Lyon & Lyon
Lewis E. Lyon
Attorneys for Defendant.

[Endorsed]: Filed Apr. 5, 1934, R. S. Zimmerman
Clerk By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

NOTICE OF SETTING

TO WILSON-WESTERN SPORTING GOODS CO., a
corporation, defendant and Lyon & Lyon and Lewis
E. Lyon, its attorneys:

Please take notice that I will call up the above entitled cause for setting before Hon. David B. Head, Special Master herein, at his office in the Federal Building, Los Angeles, California on Monday the 7th day of May, 1934, at the hour of ten o'clock A.M., in the forenoon.

Dated this 4th day of May 1934.

Frank L. A. Graham

Attorney for Plaintiff.

[Endorsed]: Filed May 4, 1934 R. S. Zimmerman,
Clerk By L. Wayne Thomas, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

STATEMENT OF EVIDENCE IN NARRATIVE
FORM.

This cause was called for trial on May 29, 1934, before Hon. David B. Head as special master, pursuant to the order of reference dated April 5, 1934, and continued to and including June 1, 1934.

APPEARANCES:

For plaintiff: FRANK L. A. GRAHAM, ESQ., of Los Angeles, California;

For defendant: LEWIS E. LYON, ESQ., of LYON & LYON, Los Angeles, California.

An opening statement was made by counsel for plaintiff and by counsel for defendant, during the course of which the following exhibits were offered and received in evidence:

Plaintiff's Exhibit No. 1—Patent in suit No. 1,639,547, granted August 16, 1927, to George E. Barnhart;

(See Book of Exhibits, Exhibit No. 1)

“ “ “ 2—Patent in suit No. 1,639,548, granted August 16, 1927, to George E. Barnhart;

(See Book of Exhibits, Exhibit No. 2)

“ “ “ 3—Golf club sold by defendant.

(14-16)

(Testimony of George E. Barnhart)

GEORGE E. BARNHART

the plaintiff, called as a witness in his own behalf, being first duly sworn, testified as follows: (17)

DIRECT EXAMINATION

BY MR. GRAHAM

My name is George E. Barnhart and my residence is care of Pasadena Athletic Club, Pasadena, California. I am engaged in the development of my ideas, perfecting inventions. I am the patentee named in the patents in suit and am the sole and exclusive (18) owner of those patents. I have not assigned any interest in the patents in suit. As to what experience I have had in mechanical construction, I was with the Department of Military Aeronautics with the Government, in Dayton, Ohio, during the early war development, and later chief engineer of the Handley-Page production for the Standard Aircraft at Elizabeth, New Jersey; later, experimental engineer with B. F. Goodrich Company, Akron, Ohio; built and produced various types of aeroplanes; built and produced production pontoons for Navy contracts.

As to whether my experience along mechanical lines has been directed to the field of golf, I saw the need of an additional type of tapered tube for golf clubs several years ago. At that time I also saw the need of additional improvements in golf clubs, and experimented at great length with golf shafts and golf clubs. One of the early problems with the metal shaft was adapting the shaft to meet the hosel condition of a wooden shaft hosel of a golf club, having a wooden shaft. Then later they (19) brought out a hosel having a tight wall between the shaft, a tight wall connection between the shaft and the hosel,

(Testimony of George E. Barnhart)

and at that time there was considerable breakage of the shaft joined at the hosel; also there was considerable sting in the shaft itself, transmitted from the club head to the hand.

I caused to be sent to the defendant in this case a notice of infringement of my patents. Being shown a carbon copy of a letter dated April 19, 1930, and directed to Wilson-Western Sporting Goods Company, 2037 Powell Avenue, Chicago, Illinois, signed by myself, that is the letter I referred to as having been sent to the defendant company.

(The notice of infringement last referred to was offered and received in evidence as Plaintiff's Exhibit No. 4.) (See Book of Exhibits, Exhibit No. 4.)

The matter of the defendant infringing my patents (20) came to my notice by a circular advertisement of the Wilson-Western Sporting Goods Company. Being shown what purports to be a page from the issue of Golfon, one dated March, 1930, and the other in November, 1929, that is what I referred to.

Q These pages appear to be advertisements, and at the bottom of each page, in both of these documents, appears the name "Wilson-Western Sporting Goods Company, New York, Chicago, Los Angeles and San Francisco." I will ask you whether or not that is an illustration of the defendant's club that came to your attention at that time. (21)

(Objected to on the ground that the question calls for a conclusion of the witness, as to whether it is any illustration of the defendant's club. Objection overruled. Exception allowed.)

(Testimony of George E. Barnhart)

A It is. (22)

I referred to the November, 1929 issue. That is also true of the March, 1930 issue.

(The page from the November, 1929 issue of "Golfton," was offered in evidence as Plaintiff's Exhibit No. 5, and the page from the March, 1930 issue was offered in evidence as Plaintiff's Exhibit No. 6. Objection was made on the ground that the exhibits were not properly proven or identified, and incompetent, irrelevant and immaterial, and publications of some other club not involved in the issues in this case, and no evidence given which connects it up with defendant. Objection overruled and exception taken. Received in evidence as Plaintiff's Exhibits Nos. 5 and 6.) (See Book of Exhibits, Exhibits Nos. 5 and 6.)

My attention being called to a page having at the top "Collier's for May 17, 1930" and at the bottom saying "Wilson Golf Equipment. Wilson-Western Sporting Goods Company. Football, Baseball, Basketball, etc.," that is another one of those advertisements that came to my notice at that time. (23)

MR. LYON: Objected to as incompetent, irrelevant and immaterial.

THE MASTER: Overruled. What was that date?

MR. GRAHAM: This is May 17, 1930. I wish to read in the record this portion appearing in large black type.

MR. LYON: We object to that.

THE MASTER: It speaks for itself.

MR. GRAHAM: I would like to call that to the court's attention, the reading of that.

THE MASTER: I will read it.

MR. GRAHAM: Now, to make this complete, these catalogs that were given to us at our request, in other

(Testimony of George E. Barnhart)

words, when we told the defendant that we would point out the clubs which we claimed to infringe, they handed us these catalogs for 1929 and 1930.

MR. LYON: It is also a fact, Mr. Graham, that I advised you, under date of January 24, 1934, that this defendant had nothing to do with the catalogs of 1929 and 1930; is that not true?

MR. GRAHAM: That is true, but when we were required to give a bill of particulars we asked you for catalogs of your company, of the defendant company, and these were furnished to us.

MR. LYON: I advised you that I made an error in sending you the 1929 and 1930 catalogs, that they were not published or distributed by this company; is that not correct?

MR. GRAHAM: That is correct.

THE MASTER: What is your contention as to the identity of these?

MR. LYON: There was a company here which, for years, was operating in this state under the name of Wilson-Western—I forget the rest of it's name—I believe Sporting Goods Co. That company was dissolved in the latter part of 1930 and withdrew from business in this state. At that time this Maine corporation was formed under the same name, and was at that time authorized to do business in this state.

THE MASTER: What is the relationship between the two companies, the one that was dissolved and the present one?

MR. LYON: No relationship that I know of.

MR. GRAHAM: It is the same name, Your Honor, apparently, and apparently it is the same company; or,

(Testimony of George E. Barnhart)

for some reason, possibly there was a reorganization or something, and they took out the second charter in a different state.

MR. LYON: There is no corporate identity, so far as I am advised, between the two companies.

THE MASTER: Did the second company succeed to the business of the first company?

MR. LYON: No. I believe the business of the first (25) company was entirely taken over by a Delaware corporation, that its entire assets were taken over by that corporation.

MR. GRAHAM: There is no proof of anything of that kind.

THE MASTER: That is a matter of proof, of course.

MR. LYON: It is a matter of proof for the plaintiff to prove what the 1929 and 1930 company did.

MR. GRAHAM: If the defendant says no, they can offer proof to that effect. So far as we know, they are the same company.

MR. LYON: The burden of proof is actually upon you.

MR. GRAHAM: All we have to prove is that they were here, doing business at the time suit was brought.

MR. LYON: We have admitted that, that there was a company here doing business at that time, by that name.

Being shown a catalog of the *Wilson-Western Sporting Goods Company* of 1930, furnished by the defendant, and my attention being called to page 4, that illustration fairly represents the construction of the defendant's club.

(Objected to as incompetent, irrelevant and immaterial, and on the further ground that no foundation has been laid for the use of that catalog; and on the further ground that defendant advised plaintiff's counsel that that is not

(Testimony of George E. Barnhart)

a catalog furnished or distributed by the defendant company.)

THE MASTER: These catalogs were furnished you by the defendant; is that the case? (26)

MR. GRAHAM: That is correct. (27)

THE MASTER: All right. I will receive them in evidence, all of them. You don't need to further identify them. They were received in response to a bill of particulars?

MR. LYON: There was no bill of particulars asked on which these catalogs were furnished. They were furnished to plaintiff's counsel as a convenience to him; and I also advised him about 10 days later that I made an error in giving him those two catalogs, that they were not supplied by this company.

THE MASTER: I will receive them.

MR. LYON: Note an exception to the ruling.

MR. LYON: In that regard, I would like to ask Mr. Graham if he has the original letter that I wrote, under date of January 24, 1934. I think it would be proper to put that in evidence along with these catalogs at this time.

MR. GRAHAM: I have no objection.

(Six catalogs entitled "The Gateway to Golf" received in evidence as Plaintiff's Exhibit No. 8.) (See Book of Exhibits, Exhibit No. 8.)

(No exhibit offered under number 7.)

MR. LYON: I will ask in that connection that this letter may be received.

MR. GRAHAM: That has been stated and admitted. It is merely to the effect that, after having given us those, and after having furnished the bill of particulars, they sent that letter.

(Testimony of George E. Barnhart)

(Letter dated January 24, 1934, from Mr. Lyon to Mr. Graham, received in evidence as Defendant's Exhibit A.)
(See Book of Exhibits, Exhibit A.)

Q. BY MR. GRAHAM: By the way, when did you first visit a store of the defendant company, the Wilson-Western Company, in Los Angeles, as you recall?

(Objected to as calling for a conclusion of the witness. Objection overruled. Exception.)

A. In the early part of 1930.

As to whether I visited that store on numerous occasions since that time, I have visited another one on South Hill Street, 714 South Hill Street, in 1930, and since then they have moved to West Eighth Street in Los Angeles. The same people were in the store on Hill Street and on Eighth Street.

Being handed a club marked Plaintiff's Exhibit 3 and asked where I got that club, this was purchased from the Wilson-Western Sporting Goods Company on West Eighth Street some time last year.

MR. LYON: We have admitted that that is a club of ours. I don't see any necessity of going into that. We have admitted that that is a club of ours, and that it was sold, or an example of those that we sold.

MR. GRAHAM: Will you admit that that club is one that was purchased from your store?

MR. LYON: It apparently is, yes, purchased from our store or from our distribution somewhere.

Witness continuing:

I find a head having a socket in that golf club, Plaintiff's Exhibit 3 and I find a shaft secured at one end within the socket. The portion of the shaft within the outer end

(Testimony of George E. Barnhart)

of the socket is movable relative to the socket. There is a sealing member positioned at the joint between the outer end portion of the socket and the shaft. The portion of the shaft near the outer end of the socket is freely movable within and relative to and about the outer end portion of the socket.

CROSS EXAMINATION

BY MR. LYON:

As to whether I am what might be classified as a professional inventor, I was trained as an engineer and held several engineering positions. As to my occupation at the present (31) time and not about what I was trained as, well, it affects my work at the present time, because that training helps in the development at the present time. My business at the present time is endeavoring to develop ideas and sell them to somebody. As to how long I have been engaged in the occupation of endeavoring (32) to develop ideas and sell them to someone else, I haven't been endeavoring; I have been developing, when ideas come. for the last 25 years, possibly.

As to when I conducted experiments with golf clubs, in 1924, 1925, 1926 and 1927, I believe; in 1928, probably. As to whether there were two forms of golf clubs being used at that time, the steel-shafted club and the wooden-shafted club, the steel shaft was just beginning to come in at that time. I refer to in 1924 and 1925. As to whether it had been put out extensively as early as 1923, to my knowledge, well, I wasn't particularly interested in it at that time.

Q. You don't know, then, whether it actually started (33) to come out in 1924 or not? That is the first time you had observed it; is that correct?

(Testimony of George E. Barnhart)

A. No. For several years they attempted to bring out the steel shaft, in the Professional Golfers' Association; but it couldn't be approved.

I was not a member of that association. As to how I know that it couldn't be approved, well, I have read literature on it, concerning disapproval of the steel shaft, on the fact that they didn't want to place the steel shaft in an approved position.

The steel-shafted clubs that I experimented with between 1924 and 1928 were commercial articles in the sense that the idea was ready to be placed in production, placed in the hands of a company in that business. I believe I did purchase clubs on the open market to conduct these experiments with. I don't recall ever having purchased on the open market steel (34) shafted clubs. I purchased some from golf professionals, or had some given me, possibly. I believe I purchased them from the golf professionals at the golf clubs. As to what golf professionals, I don't just remember the professional that was in charge at the time at the Pasadena Golf Club. I purchased others, however. I purchased some from Wilson, and some from Wilson-Western Sporting Goods Company, and A. G. Spalding. As to whether those were clubs that I conducted these experiments with, some that I used parts of to conduct experiments with. They were not always steel-shafted clubs. Some of them were. As to whether in those steel-shafted clubs that I purchased at that time to conduct those experiments with it is a fact that the shaft was secured to the club head by the end of the shaft being tapered and driven into a tapered socket formed (35) in the hosel and then pinned in position, they had a wood hosel, or a metal hosel, with a wooden adapter, in which

(Testimony of George E. Barnhart)

the shaft was pinned to the hosel, and the adapter and the shaft—the shaft was pinned to the adapter and hosel. As to whether there were not any of the clubs that I purchased in which there was just a tapered shaft driven into a tapered recess formed in the hosel of the club, an all-metal hosel, and an all-metal shaft, I can't just remember. There were some put out by Bristol that were an all-metal hosel in connection with the shaft. There was a tight fit in that club formed between the hosel and the shaft and that shaft was pinned to the hosel. That manner of connection of that shaft, referring to Plaintiff's Exhibit 3, except for perhaps the upper portion of it, was substantially as illustrated by Exhibit 3, up to your fingers. (36)

Q. The only difference, then, between that manner of securing that shaft which you started to compare that with, with the means of securing shaft Exhibit 3 to the head, was in the use of the rubber washer, as shown in Exhibit 3; is that correct?

A. No.

There was no other difference between the point below the washer and the club head of securing the shaft to the head. As to whether the entire difference was above the point of the washer, the hosel was square across, in that taper, when I started experimenting. It was not square in cross-section. You asked if I was starting my experiment prior to this work. Is (37) that your question?

Q. No. I asked you if one of these clubs that you purchased was a club—and I understood your testimony was that, as you recalled, it was a Bristol club in which the end of the shaft, from the point of my finger down to the club head, was secured inside of the socket, in the same manner as this Exhibit 3. Is that correct?

(Testimony of George E. Barnhart)

A. Yes. During that period between 1924 and 1928, but—

Q. Was that Bristol shaft to which you refer an article on the market before you made the alleged inventions of these patents here?

The Master: As I understand the question, Mr. Lyon wants to know whether the shafts that you bought and saw before you did this work were a tight fit such as is shown at the lower end of this.

A. No. My first work started with the wooden adapter between the wall of the ferrule and the hosel and the tube; that was the first. Then this later tight fitting club came out, but the first work—

I am not sure that it would be correct that this later tight fitting club to which I refer came out before the date on which I made my applications for patent, that is, October, 1926, and November, 1926. I wouldn't be sure whether it is or (38) not. The dates are awful close in there, and I was doing quite a bit of work on the tube, so I couldn't be sure.

Q You wouldn't claim, Mr. Barnhart, would you, that any shaft which was connected merely by a tight fit, in that manner, from the lower end of the rubber socket down to the end of the club, and did not have this rubber in position as shown by Exhibit 3, infringed your patent, would you?

MR. GRAHAM: Just a minute, if the court please. Not only is the question indefinite and vague, but it is asking for the question of infringement there. This witness cannot pass on the question whether or not one is infringing the other. As I understand, what he is trying to get at is whether or not there was a club made—

(Testimony of George E. Barnhart)

THE MASTER: This is the patentee that is testifying. However, the question is indefinite, in that it does not take into account the cut away portion that is shown in this Exhibit 3.

MR. LYON: I say below that.

THE MASTER: The better question is this: Did you consider that your patent described and covered a construction where there was a tight fit between the hosel and the tube or the shaft (39) through its entire length.

MR. GRAHAM: In other words, does his patent cover that. That is what he is trying to ask him. We don't claim that it covers that. I will answer that.

THE MASTER: That is the question, isn't it?

MR. GRAHAM: Assuming that that is a tight fit of the shaft in the hosel and has a rivet through it.

Witness continues:

As to whether this club which has been handed to me by Mr. Graham illustrates one of the types of clubs which was on the market at the time I made the invention which I allege is shown in my patents in suit, no. I believe when I made the invention there was just the wooden hosel, wooden adapter in the hosel. (40)

Q And no clubs of the character of this club which Mr. Graham has handed me were on the market at that time, to your knowledge?

A It was in that period, but I couldn't say for sure whether they were on the market or not.

In speaking of this wooden adapter, I refer to a wooden cylinder which was passed into the cavity in the ferrule of the club, and into which cylinder the end of the shaft fitted; it was put in there, a tapered cylinder. That assembly of the tapered cylinder or frustrated cone which

(Testimony of George E. Barnhart)

fitted inside of the socket of the ferrule and surrounded the end of the shaft was secured in position, the entire assembly was secured together by means of a pin passed through a hole, in substantially the position of the hole as illustrated by this club which Mr. Graham handed me.

(The club produced by Plaintiff's counsel was offered and received in evidence as Defendant's Exhibit B.)

As to whether when that assembly was fixed together, that prior assembly, which included the wooden sleeve, it is not a fact that the joint between the upper end of the ferrule of the club and the shaft of the club was wrapped with a wrapping and the wrapping then coated with shellac to form a tight, water-proof joint at that point, that joint could never be made tight; that was one of the problems, because the shellac would break, (41) after it dried it would break, and the club would flex. It is a fact that the joint was wrapped with twine, and that twine was then shellacked in position. It did not, at least at the start, when it was new, form a fluid or waterproofing between the club and the shaft, because you couldn't make the shellac joint tight. That was one of the problems. As to whether it was tight at no time, not even when it was first put on, when it was first put on, with the wet shellac, of course it might have been fluid tight, but when you flexed the club it would immediately break.

As to whether I can fix any more definitely the date when the Bristol club was brought out, that is, when a club was brought onto the market which eliminated this wooden cylinder interposed between the shaft and the socket of the head ferrule, I couldn't be sure. It might have been on the market, because (42) that problem was discussed at various times. It is not very clear in my mind as to

(Testimony of George E. Barnhart)

whether it was on the market at the time I was working on it or subsequent. (44)

Referring to Defendant's Exhibit B, I would consider the passing of a pin through the hole, the ferrule of the club, as that hole is now placed, would be the securing of the shaft of Exhibit B at its end to the ferrule of the club. As to whether what I am considering as the end of the shaft is any portion of the shaft toward the lower tapered section, well, there is a reasonable distance that would be the end there, a small portion there. You couldn't get to the middle and still have it the end. I mean the middle of the entire shaft (45) It would have to be something like three-quarters of the way down the club to be at the end, probably a little more than that. I would not necessarily consider that securing at the end was securing the shaft at any point within the cavity of the ferrule of the club. As to whether I would or would not consider that if I passed a pin through the very upper portion of the ferrule of the head of Exhibit B, and passed that through the club, that I have secured the shaft to the ferrule at the end of the shaft, it would be dependent, of course, on the length of your ferrule. You asked me about Exhibit B and the lengths are there fixed. I can answer the question, whether or not I would be securing the shaft to the head of Exhibit B if I passed a pin through the very upper portion of the ferrule, and through the shaft, in the manner you have indicated within the last quarter of an inch of the end of the ferrule, the upper end of that ferrule. That would be securing it at its end, at the end of the shaft. You (46) are rather stretching it up that way, but it is at the end. As to how far up there is not stretching it, I would say about the position of that

(Testimony of George E. Barnhart)

pin, or possibly beyond. I mean the position of the hole, of the head of Exhibit B. That is approximately a little bit below the center of the length of the shaft which is within that socket. If it was beyond that center of the portion of the shaft within that socket, I would consider that securing the end of the shaft or securing the shaft at its end in the ferrule of the club. You have a tight hosel there, and the hosel is tightly around it, so it would be at its end. Any time that I used a tight hosel, then, relative to the periphery of the shaft, that would be securing the shaft at its end to the club head, providing you made some provision so that the shaft wouldn't pull out again, so that it would stay in tightly with (47) the wall of the shaft; the inner wall of the hosel would be tightly against the shaft. The purpose of these slots in my patent, Exhibit 1, is to permit a weakening of the shaft at its section within the cut out chamber formed in the hosel of the shaft, and that weakening of the shaft by forming those longitudinal or spiral slots, as shown in Exhibit 1 or Exhibit 2, is to permit a flexing of that shaft within the head torsionally and transversely; there is some movement you gain transversely. That is, the purpose (48) of that weakening of the section of the shaft and the cutting out of that chamber or socket, as shown in Figure 3, is to permit the club shaft to bend somewhat in the manner you have sketched it in dotted lines on a copy of my patent; that in combination with torsioning effect. The reason for my cutting out that chamber around the shaft and inside the hosel is to permit the bending of that portion of the shaft within the hosel; that is one object. There is also another figure there which shows a slightly different use of that principle. If you put a pin through

(Testimony of George E. Barnhart)

there, you do not destroy this effect here that you obtain (49) in the slotted part of the member. You would stop your torsion, but you would still get a bending effect across this pin, across this other axis of the pin. You would stop it from any torsion. There would be some flexing. As to whether if this was a tight driven fit at this upper point where the shaft passes into the end of the hosel, and around that pin, you would still obtain that bending effect inside of the hosel, if there was sufficient area in there to stop movement there would be no motion below. That is shown in Figure 4, that type of structure. If you destroyed the fulcrum you wouldn't have any. (50) That is it. The securing of the shaft at its very end, as illustrated in Figure 1, and also in Figure 4 of Exhibit 1, and securing it at its very end, as shown in the figures of Exhibit 2, is what permits this freedom of motion of that weakened section of the shaft within that cut out chamber. As to whether I ever manufactured any club for the market of the character as disclosed in either of my patents in suit, I made them for the purpose of demonstrating the principle only. I made some clubs. I never endeavored to sell any such clubs.

I have endeavored to obtain some manufacturer of golf (51) clubs or golf shafts who would take a license under my patents. As to whether any such party has ever taken any such license, the Wilson-Western Sporting Goods Company have tentatively opened up negotiations. They made the request to supply them with a price in the matter. They did not, however, take a license and no one else has taken any. As to whether I have submitted the matter in the same manner to Spaldings, (52) Spaldings are probably affected quite differently than Wilson-Western.

(Testimony of George E. Barnhart)

I did play golf with some of these clubs that I experimented with, quite extensively. As to what particular club I played with quite extensively, probably the most used club in my bag was the two iron. As to whether that particular club I testified to as a No. 2 iron in my bag had the spiral slot, I had (53) both kinds. I don't believe I have those clubs at the present time. I have had breakage of the shafts. As to whether there was considerable breakage with those shafts and those club heads, in the spiral there was quite a problem in overcoming breakage, in the spiral, and in the longitudinal slot too there was quite a problem in overcoming breakage.

I did not make any investigation at the time I visited a store at 714 South Hill Street, which I stated was the store of the defendant, to determine who was operating that store. As to how I know it was the store of the defendant, I looked it up in the telephone book, for the address. The telephone book says "Wilson-Western Sporting Goods Company." I don't know whether that is the only manner I have of connecting it with the present defendant. I believe that would be one way of connecting it. (54) I don't know who was in charge of that office or store at 714 South Hill Street. It probably was true that it was a man by the name of Shaeffer. I wouldn't be sure of it.

REDIRECT EXAMINATION

BY MR. GRAHAM:

It appears from my cross examination that I said that my experiments with golf clubs extended over a long period. I had reference to experiments on the golf clubs shown in the patents in suit. So far as the dates of the

(Testimony of George E. Barnhart)

alleged inventions of the Barnhart patents in suit are concerned, I rely only on the filing date of the patents. I do not mean to say by that (55) that that was the time I was engaged in finding out or experimenting with the way of fastening the shaft to the head. The action of the golf club in general. I solved the problem with that adapter or flexing of the shaft over the support and pivotal point. As to whether I did anything about the shaft itself, I developed a machine for making the tapered tube, making the shaft. By "tapered tube" I mean for making a golf club or a golf club shaft of seamless tube.

(At this point plaintiff offered in evidence a letter (57) from Lyon & Lyon dated September 19, 1933, accompanying catalogs, in which it is stated: "We are informed that these catalogs were distributed in this territory by the Wilson-Western Sporting Goods Company, defendant." Received in evidence as Plaintiff's Exhibit no. 9. (See Book of Exhibits, Exhibit No. 9.) Also a letter dated April 26, 1930, from Wilson-Western Sporting Goods Company, signed L. B. Icely, President, in response to the notice of infringement. Received in evidence as Plaintiff's Exhibit No. 10. (See Book of Exhibits, Exhibit No. 10.) Plaintiff also offered in evidence a certificate of the Secretary of State referring to the defendant corporation as having complied with the State requirements for doing business in the State of California. Received in evidence as Plaintiff's Exhibit No. 11.) (See Book of Exhibits, Exhibit No. 11.)

(Testimony of George E. Barnhart)

Further

CROSS EXAMINATION

BY MR. LYON

(59)

Q Mr. Barnhart, this morning you referred to the structures which you obtained before making the invention that you allege is shown in the patents in suit and referred to the structure as put out by the American Fork & Hoe Company.

A I don't know. I don't believe I recall any reference to the American Fork & Hoe Company as to my structure.

My remarks regarding the Fork & Hoe Company were regarding the shaft. Concerning the use of a wood adapter between the shaft and the hosel of the defendant, and being handed an advertising circular of the American Fork & Hoe Company and asked to particularly refer to this illustration given here under where it is entitled "True temper," and whether that is the construction I referred to of that adapter as shown there, I don't recall any such construction at the time I was working on it. This is something that apparently is later than my work. I don't recall any structure of that type. Referring particularly (60) to this wood adapter up here which went between the shaft and the club head, that is not what I referred to as a wood adapter this morning. They show a different structure here than what we had. Concerning this structure here, this doesn't show anything up there. This just shows a plug and doesn't show whether this is a hole or what it is there. This might be a solid forging just as it comes from a drop forge plant. The wood adapter that I referred to this morning was not shaped like this wood

(Testimony of George E. Barnhart)

adapter on its exterior. I believe that some of them had a little different taper than that. I wouldn't say they were slightly different in taper but otherwise they were the same.

Q How did they differ besides a slightly different taper? You have drawn on this illustration a dotted line showing a hole through the center of the wood adapter, is that correct, and also reversed taper lines on the end, which is shown cut to a smaller diameter. Is that the only distinction? (61)

This was a straight line down here. These were straight lines instead of curved lines here. This is a curved flare in there. Instead of being flared, it was essentially a straight taper.

(Witness was requested to mark the words "straight taper" where the straight taper was.)

The club head was forged out to receive that wood adapter. It was forged like this. The other parts of the club as shown in that cut were not approximately as they were at that time. There wasn't any of this and there wasn't any of this, that is, there wasn't any of this fibre check ring. As to whether there is a celluloid sleeve illustrated there, it says "alloy steel sleeve in place." I never saw any alloy sleeve. The (62) difference is, then, that the end of the shaft was inserted directly into the end of the wood adapter, and then that wood adapter with the shaft in place was inserted into the opening that I have drawn in the head. Essentially this went right straight through. The sizes are wrong in proportion here. As to whether the entire assembly was then pinned together with a pin that passed through somewhere like

(Testimony of Horace E. Gillette)

where you have drawn the circle on this illustration, sometimes it was pinned in that direction and sometimes in the opposite direction.

(Advertising circular of American Fork & Hoe Co. with illustration entitled "True Temper", offered and received in evidence as Defendant's Exhibit C.) (See Book of Exhibits, Exhibit C.)

(Plaintiff rests.)

DEFENSE

(63)

(Certified copy of the file wrapper of patent in suit No. 1,639,547 offered and received in evidence as Defendant's Exhibit D. (See Book of Exhibits, Exhibit D.) Certified copy of the file wrapper of patent in suit No. 1,639,548 offered and received in evidence as Defendant's Exhibit E.) (See Book of Exhibits, Exhibit E.)

HORACE E. GILLETTE

called as a witness on behalf of defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LYON.

My name is Horace E. Gillette. At the present time I am manager of the Wilson-Western Sporting Goods Company, Los Angeles branch. I have occupied that position since November 15, 1931. Prior to that time I was with B. H. Dyas & Company as manager of their sporting goods department. I occupied (64) that position approximately 10 years. At the time I was working for Dyas & Company I was located at Seventh and Olive

(Testimony of Horace E. Gillette)

Streets. During the time of my employment with Dyas & Company I bought and sold golf clubs. I inspected and studied the catalogs which were offered by the different companies. I generally also ordered the quantity that we needed from year to year; I mean the quantity of catalogs. Being handed a catalog, I have seen this catalog or one like it before. I first saw that catalog about the first of November in 1924.

While I was with Dyas I sold clubs like those illustrated in that catalog. Being handed a club in pieces (65) and asked if I can identify this club, this is the old Wilson-Jock Hutchinson model made by the Wilson Company. I saw the first samples of those the first of October, 1924. I made purchases of those clubs for Dyas & Company. Quite a quantity of those clubs was sold by Dyas & Company. As to when I made those purchases of clubs like the one just handed me, we generally placed the order in November and received shipment some time about the middle of January or first of February of the following year. Those purchases were made while I was manager of the sporting goods department of B. H. Dyas & Company.

(The catalog identified by the witness was offered in (66) evidence as Defendant's Exhibit F, referring particularly to the illustration of the Jock Hutchinson or J. H. clubs, steel-shafted clubs, as contained in that catalog at page 22.)

Catalogs like this were distributed by B. H. Dyas & Company in Los Angeles. They were sent by mail and distributed by hand. As to approximately how many such catalogs were so distributed, we generally handled around

(Testimony of Horace E. Gillette)

1,500. Those catalogs would be distributed approximately from February 15th and over a period of four or five months. I do not know any particular time when this particular catalog was distributed. (67)

MR. GRAHAM: I mean a catalog having the same contents, the same pages and the same illustrations.

A Yes, sir.

Q You are positive of that?

A Yes, sir.

Q How do you recollect that?

A I handled them.

As to whether I just remember from handling them that they had the same pages and the same illustrations, I wouldn't identify every illustration in it but I sold most of that merchandise. This loose part appearing here is a fly sheet that was printed after the catalog was finished. As to whether they used that same catalog over a number of years, every year the illustrations (68) generally changed. This one was put out in 1925 and it is so dated here by the copyrighters. That is the only way I can identify this catalog, by a copyright notice attached to a design on page 2 of the catalog, and also by a knowledge of the merchandise that is listed. I don't know that that copyright notice may refer to a copyright of this trade insignia or designation or symbol.

(The catalog previously offered in evidence as Defendant's Exhibit F was received in evidence over objection by counsel for plaintiff and an exception noted.) (See Book of Exhibits, Exhibit F.)

(Testimony of Horace E. Gillette)

(At this point defendant offered in evidence the sample of the J. H. or Jock Hutchinson club as identified by the witness. Objection was made to its introduction by counsel for plaintiff on the ground that the witness has not testified (69) that he has known that particular club to have been in existence at any particular time, his testimony being that like clubs were in existence at certain times.)

That is not the exact club that was sold. This particular club does not carry the Wilson label on it but the exact and same clubs were sold by the Dyas Company with the Wilson label on them. This exactly illustrates what I sold in every detail, except for the marking on the face of the head.

(The J. H. or Jock Hutchinson club previously offered in evidence was received in evidence as Defendant's Exhibit G and an exception noted for plaintiff.)

On these clubs that I sold while I was with the Dyas Company in 1925, the shafts were pinned in to the hosel of the club head. It was a very tight fit. The shaft section was (70) slightly tapered. In nearly every instance it was a (71) driven fit. By driven fit I mean we would have to take a ball bat to drive the head on. After the head was driven on with the ball bat, then the pin was put through. There was a hole already in it. They were drilled at the factory, in the shaft and the hosel both. There was not any material of any kind put in at the upper end of the hosel of the club head. There was no wrapping or anything else put at that joint in this grade of club. In the higher grade of club there was some wrapping put on it. That was in 1925. It was generally a thread or

(Testimony of Horace E. Gillette)

string. Varnish or shellac was put on that thread or string (72) just to finish it.

Being handed a further model of club, I can identify this club. That is a Wilson Company's club Model No. 283 as now sold by the Wilson Company. That particular sample came from our shelves the best I know. I am familiar with the manner in which the shaft is secured to the head in this club that I have just identified. There is no difference in the manner of securing that shaft to the club head from the one in which the club head is secured to the shaft in the model Exhibit G, this old J. H. Model. The end of the shaft in the Wilson model that you just handed me is tapered. As to whether it is a driven (73) fit, these are not driven in as tight as the others were, the old models, but in some instances you have got to drive them on, that is, drive the heads on. After it is thus positioned with relation to the head, a pin is used to secure the head to the shaft. In the particular model which I have just identified, the pin is positioned about half an inch up from the end of the shaft, from the tapered end, the end that goes into the hosel.

(The Wilson Company's club Model 283 identified by the witness was offered and received in evidence as Defendant's Exhibit H.)

With this club Defendant's Exhibit H and of this same construction, the Wilson Company has some difficulty with shaft breakage. In most cases the shaft breaks about a quarter of an inch below the top of the hosel. By the top of the hosel I mean the very uppermost end of the hosel, not the uppermost (74) end of the undercut portion; the uppermost end of the hosel. That quarter of an

(Testimony of Horace E. Gillette)

inch would be just about down where that shoulder is; that is where it generally breaks.

I am a very poor golf player. I have played golf about 22 years. During those 22 years I have used different types of clubs that have been placed on the market. As to what causes the breaking of the shaft at the point that I have indicated, that is generally where the stress of the shaft comes, at that particular spot.

The shock or vibration which is transmitted to the club head on the impact of the club head with the ball is the type of shock that Defendant's Exhibit H transmitted up the shaft (75) to the hand. In my opinion there is nothing incorporated in this club which would prevent that shock from being transmitted back to the hand. I state that the shock is transmitted from the club head back to the hands because there is a solid piece in here and it is fastened tight to the club head. There can not be any movement of the end of that shaft as it is secured to the Defendant's Exhibit H or as secured in accordance with Plaintiff's Exhibit 3 within the hosel of the club to absorb that shock or any portion of it.

CROSS EXAMINATION

BY MR. GRAHAM.

I first knew of the defendant company in 1925. As (76) to when I first knew of their store in Los Angeles, they never had a real store. They had a warehouse where they distributed clubs. They had a place on Hill Street. That was about 1930, I think, at least as early as 1930. I was never in that store of the Wilson-Western Sporting Goods Company at that time. I did not see it. I knew it was there from correspondence I had with them. I had correspondence from them at that place of business. (77)

(Testimony of Horace E. Gillette)

Defendant's Exhibit H is a club which was placed on the market by the defendant company here in Los Angeles. They have a number of different types of clubs. They are different constructions from that illustrated in Defendant's Exhibit H. The prices of those clubs vary, according to the different clubs. I did not say that in my opinion there is no shock or sting transmitted to the hands of the golfer in using this club. (78) I said there was nothing that would take that shock away from the hands of a golfer.

The club Defendant's Exhibit H that I have produced is known generally as Model 283. As to what the defendant company designates as the no-shock hosel, it is a little piece of rubber up here. That is the way it was advertised, as a no-shock hosel. It is advertised that way and has been since 1930, I think.

My attention being called to the following statement in the 1930 catalog of the Wilson-Western Sporting Goods Company at page 4: "This invention is so ingeniously worked out that it is possible to obtain this freedom from shock and still have the shaft actually anchored to the club head. This feature forestalls any possibility of shock at the time of impact being transmitted from the club head through the shaft." I do not agree with that statement. It is true that the clubs (79) marketed by my company having that gasket or rubber interposed between the hosel and the shaft are known and sold as a no-shock hosel, as a selling argument. The end of the hosel is cut away on the inside. As to whether I know of my own knowledge whether all of the clubs marketed by my company having that rubber in were made as the club Defendant's Exhibit H, in 1931 they did not have that shoulder in there.

(Testimony of Horace E. Gillette)

Q In other words, in 1930 and 1931 they were made as (80) illustrated on page 4 of this 1930 catalog, Plaintiff's Exhibit 6, is that correct?

A They were made this way in 1930 but not in 1931.

My attention being called to page 5 of a 1931 catalog and to the wording: "Note that the lower end of the shaft is secured to the hosel by close frictional contact and the air chamber at the upper end of the hosel permits a slight play.", to me that does not indicate that the club so illustrated was made in the same way as the 1930. I think the statement that it is made with a slight play at the upper end is an advertising man's idea because the club wasn't made that way. None of the clubs marked by my company since 1930 have been constructed like that illustration shown in the 1930 catalog. As to how I know that, well, I have handled them every year. As to whether we ever cut them open to look at them, we take out shafts and replace them every week. It is my testimony that these statements I have read from the catalog and the illustrations are untrue. A good many of those catalogs were sent through the (81) mail.

My attention being called to Defendant's Exhibit H and holes in the hosel, that is, what might be called a single hole extending from one side through to the other, that is to receive a rivet. It would make a difference in the function of the rivet if that hole for the rivet was a half an inch lower than it is here. It would crack the shaft if you put it any lower. I say that because we tried it. The factory tried quite a few of them that way. I know that of my own knowledge. I did not see them try it, but I have seen some clubs made that way and in nearly every instance the shaft cracked at the end because there

(Testimony of Horace E. Gillette)

was nothing to hold it. That position of (82) the rivet cannot be varied either up or down after the factory makes them. I can't answer the question whether or not it would make any difference in the function of the rivet in holding the shaft in the hosel. I don't know. I do not say that I tried to put a hole through that shaft a half an inch lower. We have had some come out a half an inch lower and in nearly every instance the shaft would crack down toward the end due to the drilling. As far as I know that is the only objection to placing the hole in the shaft at a lower point. The function of the rivet in holding the hosel on the shaft is the same whether it was in the identical spot shown in Defendant's Exhibit H or whether it was lower or higher on the shaft. I don't know that this rubber member has any effect on the club except may be to protect that pyrolene collar up there. (83) I am referring to this back portion above the rubber on the shaft. I don't think the portion of the rubber that extends down between the hosel and the shaft protects the pyrolene collar. It is just the upper part that does. I don't think the rubber performs any function that extends down between the shaft and the hosel. We might just as well leave it out of there. Looking in the end of this hosel I see a shoulder there. If we left the rubber out of there, the shaft would bend directly over that edge, without any resistance in the end of the hosel.

Q When you place the rubber inside of that, in other words, interpose the rubber between the hosel and the shaft, you have a yielding member there that is compressed and takes some of the strain off of that during the bending, isn't that correct?

A Very little.

(Testimony of Horace E. Gillette)

Q. But it takes some of the strain off of it?

A I don't know that it does.

Q Well, the shaft certainly doesn't bend as freely with the rubber out as with it in, does it?

A They break just as quick whether it is in or out.

Q Will you answer the question, please?

A Say it again.

MR. LEWIS E. LYON: I think the witness has answered the question and given his reason for it.

THE MASTER: We will have the question read.

(Question read by the reporter.)

A I have no knowledge with which to answer the question.

Q BY MR. GRAHAM: Then, you don't know?

A I don't know.

As to whether the defendant company puts out a club in which the shaft fits tight within the hosel, all of our shafts fit tight within the hosel. I mean without any rubber such as this shown in Plaintiff's Exhibit 3. We put out cheaper clubs just like that. These with the rubber interposed are sold at quite a higher price, at a substantially higher price, several dollars. (85)

REDIRECT EXAMINATION

BY MR. LYON

The only difference between the cheaper club and our higher priced club is not the use of that rubber between the hosel and the shaft. It is a fact that a great deal of the club of the character of Defendant's Exhibit H is a finer piece of workmanship throughout, with a great deal more ornamentation on it, than the cheaper type of club; a different head, a different shaft, different handles, and

(Testimony of Horace E. Gillette)

different features on the handle, such as this flattened portion of the handle. The cheaper (86) club does not have this marking of the metal on the top and does not have the same type of pyrolene sleeve on here. A great many of them are painted shafts. In fact there isn't anything at all in common between the cheaper type of club and the more expensive type. The heads of the higher priced clubs are made of stainless or chromium steel. Real high priced ones are stainless steel and the others are a very high grade of steel with a very good chromium plate.

I have stated that in my opinion this little piece of rubber like incorporated in Defendant's Exhibit H really has no function other than perhaps to protect the pyrolene sleeve. As to what I base that answer on, I can't feel the difference between them made that way and the other way. The shaft would break just as quick with it in or with it out. I have not tested substantially the same club by taking the rubber out and testing it and then putting it back in and testing it, but some people have.

As to whether I as the sales manager of the Los (87) Angeles concern received any complaints with reference to the use of that rubber in our higher priced clubs, we have had a great many of the professionals tell us we were kidding ourselves. Some of them suggested it would be better for us to take that rubber out for no particular reason why except that the customer asking if that is true you have to tell them no if you tell the truth. As to whether it is not a fact that that little piece of rubber deteriorates under the effect of the weather at that point, it will get hard after a while and you have to either take it out or put a new one in, and they do that because of the fact that it deteriorates the appearance of the club. When it gets hard it cracks away.

(Testimony of Horace E. Gillette)

RECROSS EXAMINATION

BY MR. GRAHAM

The Wilson-Western Sporting Goods Company puts out some clubs called "Oggmented". There are two grades of clubs. (88) The difference between those two grades is generally in the finish of the shaft. Some of them have high powered shafts in them and some of them have straight Union shafts in them. You see this is a cheaper grade than the high powered shaft club grade. It is a Union club, referring to Plaintiff's Exhibit 3. That is a Union shaft, made by the Union Hardware & Metal Company. That is a cheaper shaft. We do not have a sample of the high-powered shaft here. There is no difference in the (89) construction of those two clubs. By "construction" I do not include ornamentation. I mean the way they are put together. As to what I mean by ornamentation, this Union shaft here, for instance, has a cellulose covering, and the cheaper grade of club does not have that on it. It is a plain shaft something like that.

Referring to these two Oggmented clubs and as to whether they both have this covering on the shaft, they have got three of them. The high powered shaft is the shaft made by the Croydon people that has a covering like this on it. Then, the cheaper one is just a plain shaft without any covering on it. This is the second one. This is the Union shaft. Two of them have the cover on and the other one is just a bare shaft. The rubber bushing is used in all three classes of Oggmented clubs. (90) I don't know whether it is shown in the catalog or not. I don't know whether it is shown in there. It is not shown in this one. The Oggmented clubs are not shown in this catalog at all. I don't know

(Testimony of Horace E. Gillette)

whether in the higher prices of the Oggmented clubs the shaft is actually brazed to the head. It might be sweated on; I don't know. I know they are all pinned, but I don't know whether it is sweated on there or not. My testimony is that in all of those Oggmented shafts there is a rubber bushing. I am pretty sure of it. (91) That cheaper grade might be made without, but I still think it has. But we have sold so few of them I haven't paid much attention to it. As to whether those that I am referring to as having sold so few of are the ones without the rubber, I say I think it has the rubber but it might not have. If that is correct, the only difference between those two clubs is that one has the rubber and the other hasn't. There is a difference of about \$2.50 in the selling price. That is not the only difference, that one has the rubber in it and the other hasn't; it is a difference in the make of the shaft, a difference in the shaft and a difference in the grips. As to whether I testified that one had the rubber in and the other did not, you asked me if my opinion was that the cheaper grade had that difference because of the fact it had the rubber or didn't, but that is not the only difference in the price (92) of the club.

REDIRECT EXAMINATION

BY MR. LYON

As to whether in the highest priced club which Wilson sells it is not a fact that that has no rubber at all between the hosel and the shaft but that it is soldered or sweated, that is, the shaft is soldered or sweated to the club head, I don't know whether it is sweated on there or not. I know it is forced on tight and pinned but whether it is a sweat process I don't know. This highest priced

(Testimony of Thomas J. Flynn)

club does not include the rubber; it has the rubber hosel on it, or I think it has. I am not sure about that.

THE MASTER: If he isn't sure about it, give the witness an opportunity to refresh his recollection on it.

I will refresh my recollection on that as to the highest priced club which we sell if I have any method of refreshing my recollection and check up on that and be ready to answer that question the next time we meet. (93)

THOMAS J. FLYNN (94)

called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LYON

My name is Thomas J. Flynn. I am assistant to Mr. Gillette, assistant branch manager. I have occupied that position since the branch was opened on April 1, 1931. My main job, you might say, is to direct the inside workings of the organization. The sales manager, Mr. Gillette, directs the salesmen and I handle or control the ordering of merchandise and the matter of adjustments in regard to defective merchandise, and I handle the correspondence that does not require his attention and supervise the orders and see that the merchandise is shipped promptly and priced correctly. I also have to do quite a bit of the inside selling.

I am familiar with all of the golf clubs sold by the Wilson-Western Sporting Goods Company here, all the different (95) ent models. I take care of replacements and repairs on all of these different models. I am familiar with each of the three different grades of so-called Oggmented clubs. The highest priced Oggmented club is a

(Testimony of Thomas J. Flynn)

stainless steel blade with a high powered shaft, that retails at \$9.50. As to the ratio of sales of these clubs one to the other of these different grades, the best moving grade that we have is the Ogmented chromium plated head that retails for \$8.50, that has a high powered shaft in it, coming in semi-flex and full flex, the flex indicating the degree of stiffness in the shaft. In these high powered shaft clubs the shafts are made by Croydon. In clubs made with those shafts, the shaft is sweated or soldered to the club head and then pinned. As to whether there is or is not such an element or anything comparable with it incorporated in that high powered shaft club, nothing of that type at all. There is nothing in the high powered shaft that is similar in construction (96) to this outside of the fact it has a steel shaft. As to the ratio of the sales of the Wilson clubs of the high powered shaft type to the type of club as illustrated by this defendant's Exhibit H and Plaintiff's Exhibit 3, roughly we sell about three times as many of the high powered shaft as we do of this shaft. That includes the three different types of high powered shaft, the stiff, the semi-flex and the full flex. As to the ratio of sales of the cheaper type of club, which is the club of this shaft type but having no cellophane or cellulose material covering on the shaft, to the high powered club, of the Ogmented club with the plain shaft this year I believe we have five sets, or perhaps it would be one-sixtieth of what we have sold of the high powered. The cheaper grade of club does (97) not have this little piece of ornamental rubber at the joint between the hosel of the club head and the shaft. The only similarity in that club is the design of the head. It has a much cheaper chromium plate and it has an oxydized finish shaft

(Testimony of Thomas J. Flynn)

as distinguished from the chromium plated shaft or a sheet shaft. The grip is the cheapest available and it does not have our reminder or flat spot feature on the grip. It is a club made to sell solely on price. It does not have that rubber bushing.

CROSS EXAMINATION

BY MR. GRAHAM

This Oggmented club that I have been testifying about really first appeared the latter part of last year, when we usually get our new golf club models for the ensuing year. At that time we had samples only. They really didn't have much sale until lately. In other words, it has just gone on the market this year. That high powered Croydon type that (98) I have referred to is not a straight steel shaft. It is a shaft that is constructed in the same design of the original hickory shaft, that is to say, it is large at the top and tapers down to its smallest diameter within three or four inches of where it enters the hosel; and at that point it enlarges until it gets to the hosel and then it tapers off small again to fit into the hosel of the head. In fact, it has quite a bulge right above the hosel. That is not a new feature this year. We had that last year but not in the Oggmented club. We had it in the professional Special.

As to what proportion of our clubs that had the rubber bushing in, prior to the adoption of the Croydon shaft I would say that we sold very close to 50/50 or possibly 60 per cent with the rubber bushing and 40 per cent without. As to whether that is 50 per cent with the rubber bushing as against all other clubs, well, the rubber bushing was in different models, the same as we have different models

(Testimony of Thomas J. Flynn)

without the rubber bushing. As to what clubs were those that were sold without the rubber bushing during 1932, we had the All American iron, the PGL (99) iron, the Capitol, the Model 72 and the Model 71. The construction in the PGL and the Capitol irons was similar to this straight type of shaft, which is Exhibit B. By that I mean there was no collar of any sort at the hosel, and the other grades above those two had a collar similar to this that abutted directly against the hosel, without any rubber insert. As to whether those 50 per cent of the clubs marketed by our company with the rubber in higher priced clubs than these others I have referred to, well, the Capitol and PGL referred to of this type of construction were the cheapest and the other with the straight collar that abutted up against there was more expensive, depending upon the type of blade and the grip and the rest of the make-up of the club, and then the next step to the rubber no-shock would be approximately 50 cents difference. The no-shock that I refer to is the rubber collar that is inserted on the shaft.

REDIRECT EXAMINATION

BY MR. LYON

(100)

The rubber collar that is inserted on the shaft as far as its effect is concerned doesn't have anything to do but it is a very good mental idea for people to think about. I know that to be a fact because I have played golf with clubs that had them in and that don't have them in. As to whether I have anything to do with repairing those clubs which do have the rubber sleeve in them and those which do not, I have frequently put in shafts. However, I pass on all clubs that come in. The difference in the breakage between those clubs that do and those which do

(Testimony of Thomas J. Flynn)

not have the rubber in there is that the ones with the rubber break more frequently, than those without it. There is a difference between these clubs, the grade which has the pyrolene which comes directly to the top of the hosel and does not have the rubber in it, and a club of this type, which accounts for this 50 cent difference in price that I have stated, other than the fact of the use of this rubber. (101) The difference is in the general make-up of the club, and by that I mean the chromium plating is heavier, the grip is better and the grip has a reminder feature or flat spot. Each of those items of difference occasions a difference in the cost of making the club. We put reminder grips only on the more expensive clubs.

RECROSS EXAMINATION

BY MR. GRAHAM

The Wilson-Western Sporting Goods Company's head office is in Chicago. Mr. L. B. Icely is the president of the company. As to whether I know of my own knowledge how long he has held that office, he was formerly president of the Thomas E. Wilson Company. Then, when the Wilson-Western was organized he was made president of that company. I do not know of my own (102) knowledge when the Wilson-Western Company was organized. I wasn't with the company at that time. I know that Mr. Icely is president of the company at the present time and has been for a number of years.

My opinion is that the purpose of putting the rubber bushing in these clubs is for its advertising value.

(Whereupon an adjournment was taken until Thursday May 31, 1934, at 10:00 o'clock A. M.)

(Testimony of J. A. Patterson)

Los Angeles, California, Thursday, May 31, 1934,
10 A.M. (Parties present as before.)

J. A. PATTERSON

called as a witness on behalf of defendant, being first duly sworn, testified as follows: (104)

DIRECT EXAMINATION

BY MR. LYON

My residence is 1758 South Bedford Street, Los Angeles. My occupation is golf professional. I have been a golf professional 16 or 17 years. As to whether I served an apprenticeship before I became a golf professional, I will have to qualify that statement that I am a golf professional somewhat, because I took over a golf shop, going into the golf business at the advice of my physician. I wasn't a so-called professional for a couple of years after I was in the golf business. When (105) I took over this golf shop I had something to do with the repair and making and assembly of golf clubs. I had a club maker who did the repair work, and I have actually done club repair work myself. I would say that I had 12 years active experience in the club making and repairing end. That took place in the first place at the corner of Hollywood and Vermont Avenue, which was a golf shop before I took it over, and then for 10 years and a half at Griffith Park, I was there, and then four years at the Potrero Country Club. I took over this golf shop on Vermont and Hollywood Boulevard during the war, about 1917, '16. During the time from 1916 to date I have been familiar with the different forms of golf clubs which have appeared upon the (106) market. I am familiar

(Testimony of J. A. Patterson)

with the Wilson line of clubs. I am familiar with the Wilson steel-shafted club. I have seen and handled numbers of the Wilson steel-shafted club which has a rubber washer or member interposed between the head and the shaft. I have played golf 15 or 16 years. Being handed a club marked Defendant's Exhibit H, I have played with and handle and sell clubs of that construction, indicating the construction of the hosel and shaft. I have sold clubs of that construction, and have played with them. I have made tests of that club to determine its characteristics. When it first came out it was (107) supposed to be quite a departure from the usual construction. As to what tests I made, I played with the cushion neck in. I disassembled the head and took the cushion neck out, and then played with them. I could not distinguish any difference in the playing of the club with the cushion neck in and without the cushion neck in. I played with the same club with the cushion neck in and without the cushion neck in. I wouldn't state definitely what year I conducted these experiments, these tests, but I believe about 1929. I made these tests to see what the (108) virtue of that so-called cushion neck was. As to what virtue I found that cushion neck to have, it trimmed up the club a little. It did not affect the qualities of the club in playing with it. The tests that I made were not for the purpose of this trial and they were not made at the request of the Wilson Company.

CROSS-EXAMINATION

BY MR. GRAHAM

These tests took place at the Potrero Country Club. I took them out on the practice field and played balls, shot balls on the practice fairway with them. As to whether

(Testimony of J. A. Patterson)

I did that on just this one occasion that I have mentioned, I did it on any club which came out. I never used this particular (109) club at all, Defendant's Exhibit H, or that particular head. It was a club of that construction, with the shoulder, cushion neck in there. I hit balls on the practice fairway with the club before the cushion neck was taken out. I did the same thing with the cushion neck out. I did that several times. As to why I did it several times, if I was satisfied the first time that I did it, there are several different kinds of clubs. (110) There are mashie niblicks that call for a different shot. You play a mashie niblick different than you do a two iron, a mid-iron. If you are playing a mashie niblick shot you are digging into turf, and you are digging into hard ground, sometimes, and it will give you a different result. If there is any vibration, if there is any give to it, you get more on a mashie niblick shot than you will on a mid-iron shot. At that time I was employed at the Potrero Country Club.

Q Will you describe that club? You say it was not just like this. I don't mean to describe the club as far as the character of the head is concerned, but I mean the balance of the club.

A A fitted steel shaft, a fitted head, with a shoulder on it, at the head of the hosel, between the hosel and the ferrule that is on the shaft.

As to what I mean by shoulder, we sometimes call it a bushing. I have reference to this rubber member that is in the club. As to how the inside of the hosel was fashioned, how the shaft was fashioned in the inside of the hosel, it was graduated; it was tapered.

THE MASTER: Look at this other club here.

(Testimony of J. A. Patterson)

MR. GRAHAM: I don't want him to look at that, if the court please. I want this witness to tell what the club was like that he tried out on the fairway, knocking these balls around.

A It was a graduated hosel. Is that what you mean?

Q It isn't what I mean. I want to know what you mean by "graduated hosel."

A I can't explain it any different, unless you want me to draw a picture of it.

THE MASTER: Draw a picture of it.

Q BY MR. GRAHAM: Certainly, draw a picture of it.

A (Referring to drawing): That is a graduated hosel.

Q You mean a tapered hosel?

A Tapered.

Q Tapered from the top to the bottom of the hole?

A Yes.

Q Did the steel shaft fit the hosel from the bottom of the hosel to the top?

A Not all the way.

Q How could you get the rubber in there if it was graduated as you say?

A Because there was a section in here that was not—that was cut back.

Q Had a shoulder in it.

A I don't know what you mean by shoulder.

Q Do you know what is meant by a shoulder on a stem or a shaft or any mechanical structure?

A That isn't a shoulder. That is a depression.

Q What do you have reference to?

A This cutting out in here.

(Testimony of J. A. Patterson)

Q All right. What is at the end of the cut out portion? Isn't that a shoulder?

A Yes, this is a shoulder.

Q Now, did you ever cut one of those clubs like this is cut, Plaintiff's Exhibit No. 3?

A No.

Q You never did?

A No, sir.

Q Are you prepared to swear that in 1929 you tried out a club with rubber in it that had a shoulder in like that?

A I didn't say it had a rubber. It had fibre in it.

Q A hard fibre washer? Is that correct?

A Correct.

Q A fibre washer that didn't have the resiliency or cushioning effect of a rubber washer; is that correct?

A That is correct.

Q And you are not prepared to swear that the club that you tried out at the time was not constructed as shown in that illustration in Plaintiff's Exhibit 5, instead of having a shoulder in it?

A This was the way it was built.

Q Like that shown in Plaintiff's Exhibit 5?

A If this is Exhibit 5, yes.

Q Then it didn't have a shoulder in it; it didn't have the depression you have referred to in your testimony; is that correct?

A The depression comes there. There is a depression, isn't it?

THE MASTER: Yes. Here is your hosel. There was not a shoulder on that?

A No.

(Testimony of J. A. Patterson)

THE MASTER: It is not the same as this?

A No, it isn't cut back.

THE MASTER: Was it like this or like that?

A Like this.

THE MASTER: Like the one in the advertisement there, Exhibit 5?

A Yes.

Being shown a club marked "Reg. No. P-101, Professional Special" and being asked if that is the construction that I referred to, there isn't enough of it; I couldn't tell. I wouldn't express an opinion. I could not tell from looking at that.

I have been in the business of making golf clubs for 15 years. As to whether I made any myself, I never made this. I did make clubs, hickory shaft clubs. I never had anything to do with the manufacture of steel-shafted clubs. (115)

When I had any repair work to be done, if it was a question of a new shaft, I sent it out and had someone else do it. The necessity of having a new shaft was due to breaking. It would usually break right at the head, just about right at the end of the hosel. The Wilson-Western Sporting Goods Company made these clubs that I have testified to having this hard fibre bushing in. I couldn't tell you what they were called. I have heard of a club called the "No shock hosel". It might be the club made by the Wilson-Western; I don't know; I couldn't tell you. As to whether I am familiar with the names that the manufacturers sell their clubs under, there isn't any club sold as the "No shock" at the present time. There was three (116) or four years ago. As to whether I am quite sure that these clubs that I say I tested were

(Testimony of J. A. Patterson)

not clubs that merely had a fibre washer extending around the club and not extending down inside, in other words, a fibre washer, it came down inside; a fibre washer.

As to what I mean by a golf professional, a golf professional is a man who teaches, makes and sells golf clubs and equipment, and repairs them.

REDIRECT EXAMINATION

BY MR. LYON.

As to whether in my business of repairing golf clubs I had any occasion to take apart the clubs like Defendant's Exhibit H, of the exact construction of the hosel and shaft as they (117) are shown in Defendant's Exhibit H, I did not. We did not have the equipment to repair steel-shafted clubs. As to whether I have ever taken the shaft out of a club of the construction of Defendant's Exhibit H for any purpose, taken it out or putting it in, the only time that I would do anything of that kind was when there would be some looseness in there; I might get it out and put a new pin in it. I have done that. As to whether I have played with clubs like Defendant's Exhibit H, and with the same construction, as differentiated from the construction as shown in Plaintiff's Exhibit No. 5, the difference being that in one club there is a slight tapered pocket and in the other a straight pocket, I have played with both kinds.

Q In your opinion, is there any difference in the construction illustrated in Plaintiff's Exhibit 6 and Defendant's Exhibit H, with respect to the manner in which the shaft is secured to the hosel and the head?

MR. GRAHAM: That is objected to as calling for a (118) conclusion of the witness. The clubs speak for

(Testimony of J. A. Patterson)

themselves. If there is any difference in construction it is apparent from looking at the clubs. It does not require any opinion.

THE MASTER: As between these two exhibits?

MR. GRAHAM: Yes.

MR. LYON: In the use of them.

THE MASTER: So far as the construction is concerned, the objection is sustained.

MR. LYON: In the use of those clubs, with respect to the use of them.

THE MASTER: Has he used the different ones?

MR. LYON: Yes. He has testified to that.

A I wouldn't say there was any difference at all.

As to whether the bushing which is shown in Plaintiff's Exhibit 6, or in Plaintiff's Exhibit 5, differs in any way from the bushing as shown in Defendant's Exhibit H, as I have determined the fact from the use of the two types of clubs, the two bushings are not the same. There is no difference that I can see in the two clubs in play. (119)

Q BY MR. LYON: You have testified on cross-examination that, from your experience as a golf professional, the clubs of the type of Exhibit H, or as shown in Plaintiff's Exhibit 5, broke, when they broke, at the end of the hosel. Will you just go into that more in detail and tell just what you meant by the end of the hosel, and just where that breakage occurs.

A Just about where the two—where the ferrule and the hosel—

Q Is that at the rubber washer or above or below the rubber washer, stretching to the end of the hosel?

A Generally a little bit below the end of the hosel.

(Testimony of J. A. Patterson)

Referring to the end of the depression formed on the inside (120) of the club head hosel, I couldn't say where that breakage occurs with reference to the end of that depression in there.

As to whether I have ever made an examination of the broken shafted clubs of this type to determine just where the breakage did occur, well, as I said before, the breakage mostly always, I would say, in 85 per cent of the cases, is immediately below the end of the hosel.

RECROSS EXAMINATION

BY MR. GRAHAM

Sometimes they break above the end of the hosel, and (121) sometimes right at the end of the hosel.

REDIRECT EXAMINATION

BY MR. LYON

As to whether the breakage that occurs above the end of the hosel is frequent or infrequent in occurrence, there is less breaking than the breaking below the end of the hosel. As to whether in my opinion, when the shaft breaks above the end of the hosel, that shows correct structure of the tube of the shaft or incorrect structure of the tube of the shaft, generally there is a defect in the shaft. That is when it breaks above the end of the hosel.

RECROSS EXAMINATION

BY MR. GRAHAM

I have found clubs that were bent and not broken. The bend takes place all the way down the shaft, into the head, even, into the hosel. I have found the bend is usually above the end of the hosel. (122)

(Testimony of Horace E. Gillette)

HORACE E. GILLETTE

(Recalled)

FURTHER DIRECT EXAMINATION

BY MR. LYON

Q BY MR. LYON: When you were on the stand, Mr. Gillette, you were asked whether your highest priced club, or the highest priced club that you sell, had a rubber washer between the hosel and the shaft or whether it did not. You were asked to check up on that question and be ready to answer. Have you checked up on that matter?

A Yes. The highest priced club which the Wilson-Western Company sells does not have the rubber between the hosel and the shaft.

Being handed a club, that illustrates the manner of construction of our highest priced club, sold by the Wilson-Western Sporting Goods Company at the present time. As that club is sold, there is no rubber washer interposed between the hosel and the shaft. The shaft is sweated into the hosel and then pinned.

CROSS EXAMINATION

(125)

BY MR. GRAHAM

My attention being called to that shaft and asked whether it is a very unusual and unique structure, calling my particular attention to the bulge in the shaft, that is a new construction that came out about two years ago. Making shafts of that kind adds some to the cost of the shaft. I don't know how much. As to whether it is a much more expensive shaft than the ordinary straight tapered shaft, it is more expensive. I don't know how much more. That is not largely due to the fact that it

(Testimony of Horace E. Gillette)

is for a higher priced club. There are two features that make this the highest priced club. This doesn't happen to be the head that goes on the highest priced club. The head that goes on the highest priced club has the Ogg-Mented feature, which is one of the features which make it higher priced. In other words, the thing that makes this the highest priced club is this particular kind of head and the particular kind of special shaft, over the ordinary, common, straight shaft. (126)

Q Is that one of the cheaper clubs that you referred to?

(Objected to as not cross-examination.)

MR. GRAHAM: It certainly is. He is talking about a different priced club, and I want to find out what they are.

MR. LYON: That was fully covered.

MR. GRAHAM: We didn't have the club here.

THE MASTER: Well, we will allow this as further cross-examination.

A This is the least expensive Ogg-Mented club.

The one between those two is the one with the rubber hosel. This so-called cheaper club has the head on it that you have right there, and that is sold on this shaft.

As to the difference in price of this shaft which has a peculiar bulge right above the hosel being largely due to the fact of the shaft, the difference is between those two. As (127) to the difference between this cheap club that I have referred to and the one that has the rubber washer in it, how this one is different from the other one, well, the other one has the finish on the shaft; the other one has a cellulose product on it as this one is, and it also has a better grade of shaft and your grips are a little

(Testimony of Horace E. Gillette)

different, and there is a certain amount of work in the balancing of them at the factory, and selecting, and so forth, that makes it more expensive. Some of them are covered and some of them are plain.

REDIRECT EXAMINATION

BY MR. LYON

The differences in the price of the Wilson clubs are determined by the construction of the head and the construction of the shaft, and the grip and the finish and the balance. There is a lot in the selection. The heads, although (128) they may be Ogg-Mented heads, used on different clubs are of different finish and different steel and all that, and it is the same with the shaft.

(At this point Defendant offered in evidence a book of patents as Defendant's Exhibit J, including the following patents:

Patent to J. A. Robertson No. 206,264, of July 23, 1878, (marked J-1)

Patent to Kavanaugh No. 603,694 of May 10, 1898, (marked J-2)

Patent to Lord No. 1,249,127 of December 4, 1917, (marked J-3)

Patent to H. S. Isham No. 1,435,851 of November 14, 1922, (marked J-4)

Patent to H. C. Lagerblade No. 1,444,842 of February 13, 1923, (marked J-5)

Patent to T. G. Treadway No. 1,531,632 of March 31, 1925, (marked J-6)

Patent to P. E. Heller No. 1,551,563 of September 1, 1925, (marked J-7)

(Testimony of William A. Doble)

Reissue patent to P. E. Heller No. 16,808 of December 6, 1927, (marked J-8)

Patent to G. H. Maas No. 1,553,867 of September 15, 1925, (marked J-9)

Patent to M. B. Reach et al. No. 1,601,770 of October 5, 1926, (marked J-10)

Patent to G. W. Mattern No. 1,605,552 of November 2, 1926, (marked J-11)

Patent to R. D. Pryde et al. No. 1,615,232 of January 25, 1927, (marked J-12)

British patent No. 3288 of 1913 to S. A. Saunders, (marked J-13.)

(See Books of Exhibits, Exhibit J-1 to J-13 inclusive.)

WILLIAM A. DOBLE, (132)

called as a witness on behalf of defendant, being first duly sworn, testified as follows:

MR. LEWIS E. LYON: Mr. Graham has agreed to stipulate that Mr. Doble is a mechanical expert and a patent expert, but hasn't agreed to stipulate that he knows anything about golf clubs. Is that correct?

MR. GRAHAM: That is correct. I don't think it is necessary for Mr. Doble to put all his qualifications on the record again. He has testified in a number of cases before this court.

DIRECT EXAMINATION

Q. BY MR. LEWIS E. LYON: With the stipulation made, I will ask Mr. Doble to explain the mechanical structures of the two Barnhart patents in suit, beginning first with Exhibit 1, and then taking Exhibit 2.

(Testimony of William A. Doble)

A. To simplify matters, I would point out that in (133) principles the golf clubs of both Plaintiff's Exhibits 1 and 2 are substantially the same, in that their main objective is to provide a torsional resilience in the portion of the shaft or handle that is entered within the hosel of the club, the idea being to secure in a golf club, having a steel tubular handle or shaft, the characteristics secured from a good hickory shaft, wherein there is not only the question of flexibility in the length of the shaft, but also the question of torsional resilience. The shaft is tapered from the grip to its extreme end. In these clubs as disclosed by the teachings of the (134) patent, the extreme terminal end of the shaft is secured by brazing or some equivalent means into a recess which is formed at the base of the cavity of the hosel. Within the hosel there is an enlarged chamber which extends towards the upper end of the hosel to very nearly its upper end. That portion of the shaft within this enlarged chamber is slotted, commencing at a point shortly within the extreme end of the shaft, and the slot extending to approximately the contracted bore of the hosel above the enlarged chamber, thereby weakening, as the patentee says, the shaft, so that it will have three movements; one a torsional resilience, in that the head secured to the extreme end of the shaft can rotate about the shaft in that portion that is slotted, and where it passes through the contracted neck or, as they term it, the fulcrum or pivot points of the hosel. (135) The second motion is a bending or lateral deflection of the portion of the shaft within the hosel that occurs, due to the weakened condition of the shaft by the slots; the third motion is an axial movement in that the shaft is drawn further into

(Testimony of William A. Doble)

the hosel, or extended beyond the hosel. In the first place, the slots are longitudinal, and, as is illustrated in Fig. 1 of the patent, the extreme end of the shaft is brazed within a recess 1 a' formed in the shank of the head, where the base of the hosel is joined thereto, either by welding or some other means. Above this part the bore of the hosel is enlarged by a chamber 2 a' and the longitudinal slots are shown as 3 a'; now, the theory of this patent is that when the club impacts against the ball, a force or resistance is set up which, due to the weakened condition of that portion of the end of the shaft that is located within the enlarged chamber of the hosel, that the shaft will be torsionally resilient and allow the head to twist with respect to the shaft. Further, to absorb shock, and due to the weakened condition of the end portion of the shaft that is within the enlarged chamber, the shaft can be deflected laterally, as there is a free space between the outside diameter of that portion of the shaft and the inside diameter of the chamber, permitting therefore a bending to set up in the weakened portion of the shaft, which would occur when the blow was struck by the club; and so as to take advantage of this yielding or bending (136) action, the upper end of the hosel, as at 2 b is tapered and curved outwardly to form a fulcrum about which the shaft can move. With the longitudinal slots of the first patent, in striking the ball and in the torsional movement or resilience produced in the weakened portion of the shaft, the shaft is drawn inward into the hosel to such a degree as will be produced by the torsional movement set up in the slotted section of the shaft. Therefore, in this club of Plaintiff's Exhibit 1, it necessarily requires, to carry out the teachings and

(Testimony of William A. Doble)

disclosures of the patent, and it is so disclosed in the patent, that the shaft is only secured to the golf head, the club head I mean, at the extreme end of the shaft, where it is inserted into the tapered chamber 1 a' and is secured there by brazing or some similar means. The shaft above this point, in the weakened section, will therefore twist and allow the upper end of the hosel to rotate about and with respect to the shaft, and as the shaft is tapered and as this helical twisting takes place in the weakened section of the shaft, it tends to shorten the shaft and draw it within the upper end of the hosel, that is the portion 2 b; and therefore, as this shaft is tapered, there must be freedom of space between the shaft and the bore of the upper portion of the hosel. In other words, it must be a free, loose fit, or otherwise the shaft could not function as proposed, and the portion 2 b' of the hosel is presumed to provide a fulcrum or pivot (137) around which the shaft, acting as a lever, will turn. Now, in the patent Exhibit 2, it will be observed that substantially the same mode of operation and purposes and objects are set forth. The main difference between the two patents is that in the first patent the slots in that portion of the shaft within the hosel which weaken the shaft, to permit the bending deflection and the torsional resistance, are longitudinal, that is, they run directly in planes of the axis of rotation of the shaft; whereas in the second patent the slots are shown as helical or spirally slotted, as his specifications state, the spiral slots for the same purpose of weakening the shaft at a definite point to permit torsional resilience and bending or deflection of the shaft within the chambered portion of the hosel, necessary to carry out the teachings and mode of

(Testimony of William A. Doble)

operation of a club made in accordance with the patent. The extreme end of the shaft is the only part that is attached to the shank of the head. As stated on page 1 of the patent, commencing line 112 or about 110 "The small end of the shaft is positioned within the ferrule and the extreme end of the reduced portion is secured to the shank end of the head to which the ferrule is connected." In these patents the terminology is somewhat confusing, because they use the term "ferrule" and "socket" as possibly meaning the same thing, though of course the term "ferrule" is not correct, and it would indicate that (138) the intent of the word "ferrule" was to differentiate between the head where the original hosel of the club was removed, and a ferrule of the type disclosed in the patent was substituted by brazing or welding, though the two terms are used in a rather confusing manner.

Q. BY MR. LEWIS E. LYON: The first Barnhart patent shows the intent of Barnhart to take a club with a short hosel, to cut off that hosel and then to put what he terms a long ferrule on the club head, making a reconstruction of the club so as to enable him to get a long enough ferrule to permit the formation of the slots within the end of the club, does it not?

A. That is the purpose.

MR. GRAHAM: Objected to as to Mr. Barnhart's intent.

Q. BY MR. LEWIS E. LYON: As shown by the patent?

A. As shown by the patent and according to the teachings of the patent.

(Testimony of William A. Doble)

THE MASTER: Oh, the question is leading and suggestive. It is not in the proper form. The objection will be sustained.

MR. LEWIS E. LYON: Exception.

Q. What does the Barnhart patent show with reference to—

THE MASTER: What does it already show that you have not previously covered?

MR. LEWIS E. LYON: Well, he has not covered this at all.

THE MASTER: Call his attention to a particular (139) subject matter, then.

MR. LEWIS E. LYON: That is what I endeavored to do.

THE MASTER: I know, but you had a leading statement.

Q. BY MR. LEWIS E. LYON: The Barnhart patent discloses the reconstruction of a club; what does it disclose with reference to this matter, Mr. Doble?

A. It discloses the means of applying the shaft of the Barnhart patent to a regular form of golf club, and, as he states, the shank of the head is cut off; in referring to Fig. 1 of the patent, this is shown as cut off at the point A, which leaves just a short stub end of the shank of the head, and as shown in Fig. 1 the stub end is provided with a double seat—

MR. GRAHAM (interrupting): If the court please, I again object to this testimony. It is all plain there in the patent. This witness can testify that it shows that in one figure, and then if you read the specifications it says it can be made in one part or made in two parts. What has that got to do with the case? We are not

(Testimony of William A. Doble)

interested in whether a head is made in one part or two parts.

THE MASTER: Do you think that is an essential matter?

THE WITNESS: Yes, Your Honor, because it is a fundamental principle on which the club is supposed to operate.

THE MASTER: Do you mean that it is cut in two (140) pieces at point A?

A. To show what point A means as the base of the ferrule.

MR. LYON: And also the fact—

THE MASTER (interrupting): Let's not argue the matter. Of course, if you consider it an essential point, we will go ahead with it, and take your interpretation of it for the present. That is, it is essential to the invention that the ferrule be a separate piece from the head of the club, and that this be joined together at the point A and point B there, whatever it is?

A. No, Your Honor, that is not what I mean. What I am trying to bring out is that when, through this patent, the end of the shaft is referred to, it refers to that extreme end of the shaft which is brazed into the recess in the shank of the club at the base of the hosel, and that is indicated, that position, by the letter A and B.

Q. BY MR. LEWIS E. LYON: Now, Mr. Doble, what does this patent teach with reference to the length of a hosel or ferrule, as compared with the standard construction of the club, in order to obtain the results of Barnhart?

A. It calls for a long hosel, and again in referring to Fig. 1 of the patent, it will be noted, in dotted lines,

(Testimony of William A. Doble)

the standard hosel which is indicated by the letter S. This is an outwardly flared common form of hosel and it is shown as having (141) been cut off, and the long ferrule 2 has been substituted, so as to give the necessary length within the hosel to permit of the slotted part of the shaft to bring about the torsional and deflection of the shaft within the enlarged chamber in the hosel.

Q. BY MR. LEWIS E. LYON: Now, Mr. Doble, the patent also teaches that the ferrule end of the shaft is to be brazed in that position. Does the patent teach any way that the brazing might be performed?

A. No, it does not.

Q. In your opinion, as an expert on construction of mechanical steel parts, could the shaft be brazed in position as illustrated, and still maintain the temper required in such a steel shaft?

A. No. To braze the end of the shaft in the cavity in the base of the hosel or in the top of the short neck, would require first that the device be gotten to such a temperature as would ruin the shaft, because it would draw out all the temper, and there is no practical way in which you could put brazing material in there without it also filling up at least part of the slots, but the brazing method would ruin the shaft, because it would destroy the temper.

Q. Now, in the Barnhart patent, Plaintiff's Exhibit 2, referring particularly to the Figure 6, there is illustrated a rubber device extending over the end of the hosel—

(142)

THE MASTER (interrupting): Where does it describe the brazing of the shaft?

A. If you will look on page 2, your Honor, along about line 6.

(Testimony of William A. Doble)

THE MASTER: I read that. That says the ferrule and the head member, it says. I thought you said the shaft.

A. Yes.

Q. BY MR. LEWIS E. LYON: Referring to the specifications—

THE MASTER (interrupting): Over here, describing the pouring of metal around it, that is about line 79, page 2, it says "Such as by pouring of molten brass 4 around the inner end of the shaft within the inwardly converging recess and through a hole from the outside of the head member." Was that what you refer to?

A. Yes, your Honor.

THE MASTER: That is not brazing, is it?

A. Yes. In other words, in brazing we use either brass or an alloy of copper and zinc or an alloy of copper and tin, and the melting point of those is well up towards 15 or 16 hundred degrees Fahrenheit.

THE MASTER: I thought brazing was the forming of a bond between the brass or material you are using and the metal with which it comes in contact?

A. Brazing, if I may say, is gluing two pieces of metal together by introducing between them this metal which can (143) melt and become a bonding member between the two.

THE MASTER: I thought it was necessary, in order to obtain the bond it was necessary to at least raise the temperature of the material that you brought the brazing material into contact with.

A. Yes, up above the melting point of the brazing material. You would have to bring it up to that temperature before the brazing material will form a bond.

(Testimony of William A. Doble)

THE MASTER: I didn't understand that being described here. I thought this just described the pouring of metal into a hole.

A. From the standpoint of a mechanic it—

Q. BY MR. LEWIS E. LYON: If you did not raise the temperature of the metal around the hole, could you pour the material in there?

A. No, it would chill, freeze.

THE MASTER: You would have to bring it to a brazing temperature?

A. Yes, your Honor, the whole thing.

Q. BY MR. LYON: Now, referring to the two Barnhart patents, Plaintiff's Exhibits 1 and 2, is there disclosed in either of those patents securing the club shaft to the head at any point other than the extreme end or at the end of the shaft, as the term is used?

A. No, but I would bring attention to Fig. 4 of the first patent where the portion of the shaft which enters the (144) hosel shown as being necked down, having a minimum diameter at the point indicated by the symbol 3 b', and it also shows the brazing of the extreme end of the shaft to the shank of the head, in the cavity indicated by the symbol 4. This filling material 2 a' is referred to as being lead or some similar material. The description is not very definite.

Q. Now, Mr. Doble, in each of the Barnhart patents in suit the hosel of the club head is shown undercut to provide a chamber around the shaft, is it not?

A. With a modification—

Q. (Interrupting): Just answer. Well, all right.

A. With a modification shown in Fig. 5 of the second patent, where the hosel is not provided with a chamber,

(Testimony of William A. Doble)

and the inventor states that that will reduce the resilience or bending of the shaft within the hosel to a certain or limited extent; but, due to the fact that the shaft is provided with the spiral slots and bending action can take place and will take place because, as you tend to bend such a shaft the slots will tend to close in, so that it does not provide as free a bending at the point within the hosel which would be occupied by the enlarged chamber; but it does provide that because of the fact that the shaft is a free fit in the hosel, and as stress would be put upon the shaft to bend it, the helical slots would permit of that bending, because it would tend to provide a freedom (145) at that point.

Q. If dirt or sand found its way into this chamber between the shaft hosel and club, or into the slots 3 a of the structures illustrated in Fig. 5, what effect would that dirt or sand have on the operation of the club as shown in the Barnhart patents?

A. It would prevent the shaft from functioning, as, with foreign material filling up the slots, it would then destroy that flexibility of the portion of the shaft within the enlarged chamber of the hosel.

Q. Would that entering of dirt into the chamber or into the slots 3 a of the structure, illustrated in Figure 5, in any way reduce the torsional longitudinal bending of the shaft as disclosed in the Barnhart patents?

A. Yes, it would defeat that objection, because if that chamber is filled up, then the shaft cannot be deflected, and if the spiral slots are filled, they cannot be as effective. The first movement of the torsional resilience of the shaft would be to increase the width of the slot, and that would allow the foreign matter to go into that

(Testimony of William A. Doble)

enlarged space, and that would prevent the shaft from returning to its original position.

Q. In the mechanical arts, if you want to keep dirt out of something you put a cap on it, don't you?

A. Oh, a cap or a gland or a hood, like they use on automobiles, leather hoods, and then in mechanical arts we use (146) rubber or celluloid; it is one of the oldest shop expedients that I know of. There are two points that I had not finished on that second patent; to complete it, I want to bring it out. In referring to the second patent, it will be noted in Fig. 1 that the hosel tapers off towards its upper end, and is very thin, the purpose, as stated by the inventor being to make the upper end of the hosel thin so that it would deflect or bend with the shaft if the shaft bent more than the free space permitted between the upper and contacted end of the hosel and the shaft. This of course is very ancient practice, as shown by the prior art. And in Fig. 6 there is shown a rubber sleeve surrounding the upper end of the hosel and the shaft at about where it enters the bore of the hosel, and the purpose of that is to keep out sand and mud and water. That is also a very old expedient and is shown in the prior art.

Q. Where, in the disclosures of Plaintiff's (147) Exhibits 1 and 2, Mr. Doble, do you find anything mentioned with reference to the so-called no-shock feature which has been talked about here?

THE MASTER: Don't you know without looking, Mr. Doble?

A. I just wanted to be sure. There is nothing about no-shock or shock in it.

(Testimony of William A. Doble)

Q. BY MR. LEWIS E. LYON: There is nothing about dampening the shock in the disclosures of either of these patents either, is there?

A. No. It is all limited to the torsional and longitudinal resilience in a concentrated portion of the length of the shaft, and there are no cushioning means of any kind, metal to metal contact.

Q. It is true, is it not, Mr. Doble, that the teaching of the Barnhart patents, Plaintiff's Exhibits 1 and 2, is to obtain a freedom of movement of the portion of the shaft which is positioned within the hosel of the club head?

MR. GRAHAM: That is objected to as leading and (148) calling for a conclusion.

THE MASTER: In effect it has already been answered. Objection sustained.

Q. BY MR. LEWIS E. LYON: Mr. Doble, considering Plaintiff's Exhibit 3 and Defendant's Exhibit H, will you state whether there is such a connection there as to obtain freedom of movement of the end of the shaft within the hosel of the club head?

A. No. The connection there is absolutely rigid. There is no relative movement between the shaft and the hosel, that is, it is as rigid as a mechanical joint can be made, that is, in mechanics we can't make a more rigid joint than the tapered fit driven in solid.

Q. Mr. Doble, mechanically what is the effect of weakening the section of the shaft within the hosel in the manner as disclosed in the Barnhart patents Plaintiff's Exhibits 1 and 2, with reference to the club shaft breakage?

(Testimony of William A. Doble)

A. The effect in the construction as shown in those two patents would be to produce a local weakened section, which violates the very fundamentals of mechanics, and it would cause the stresses to concentrate at that point, which would produce fracture. In other words, in mechanics we avoid concentrating stresses of that kind, but produce the same over a greater length.

Q. Now, considering the structures of the defendant's clubs illustrated by Plaintiff's Exhibit 3 and Defendant's (149) Exhibit H, will you point out where, in your opinion, there is found any similarity between the construction of these clubs and the construction of the clubs as disclosed by the two Barnhart patents, Plaintiff's Exhibits 1 and 2?

A. Other than the fact that they are golf clubs and have a head and a handle, then that is the end of the similarity. The mode of operation, construction, results obtained and objects are fundamentally different.

Q. In Plaintiff's Exhibit 3 and Defendant's Exhibit H do you find the shaft secured to the hosel of the club head at the end of the shaft?

A. No, I do not. No, it is not so secured.

MR. GRAHAM: Just a minute.

THE MASTER: What is that?

MR. GRAHAM: Go ahead. He has answered now.

Q. BY MR. LEWIS E. LYON: Referring now, Mr. Doble to the prior art patents Exhibits J-1 to J-13, inclusive, will you briefly describe the structure as disclosed by those prior art patents and compare the structures as disclosed by any prior art patents with disclosures made in the Barnhart patents Plaintiff's Exhibits 1 and 2, and with the defendant's structure of golf clubs, illus-

(Testimony of William A. Doble)

trated by Plaintiff's Exhibit 3, and Defendant's Exhibit H?

A. The Robertson patent, Defendant's Exhibit J-1, discloses the end of a fishing rod or fishing pole, in which the socket forming the outer member, which is letter d is (150) provided with an inner bore of enlarged diameter, and, as the patent states, elliptical in shape, that means elliptical in its length. Within that bore or the socket is a flexible shaft a, secured at one end e to the end of the socket; the rod a, therefore, or shaft can deflect or bend within the length of the socket b, the same as would occur with the shaft in the Barnhart patents where the shaft passes through an enlarged chamber in the socket or hosel. At the top end of the socket, as it has an India rubber or other packing g may be employed at the joint to insure the desired result and prevent water from gaining access to the interior of the handle. So that as far back as 1878 it was a common expedient to use a rubber bushing to exclude water and foreign matter; it was a common expedient to have a socket with an enlarged bore to permit of the deflection of the shaft within the bore, and thereby secure greater elasticity or resilience in the connection between the shaft and the socket. The Kavanaugh patent, Defendant's Exhibit J-2, shows a flexible handle for use with a broom, pitchfork, spade, shovel etc., whereby a flexible connection is provided, this flexible connection consisting of an outwardly flared socket, the handle or shaft pivoted at the lower portion of the socket and a resilient means in the form of two spiral springs interposed between the outer flaring end of the socket and the pole or shaft, to relieve shock and, as the patent says, "This (151) arrangement in-

(Testimony of William A. Doble)

creases the flexibility of the broom so as to accomplish the work in a more satisfactory manner and with less fatigue to the operator than would be the case where the broom is stiff or rigid with the handle, as is the case with the common form now in use." This patent was applied for in 1897 and shows the fundamental principle of the yielding connection between the head of the device and shaft, for removing shock and making it easier to manipulate, easier on the operator. The patent to Lard, Defendant's Exhibit J-3, application filed April 3, 1917, discloses a golf club, and it will be noted that there is a flexible sealing member about the juncture of the shaft with the hosel; the hosel being in the form of a tube, and over the extreme end of the tube the leather washers are positioned and cemented, and the leather washers are tapered down so as to make a fine or a thin section merging into the handle, so as to allow for flexing of the handle, distributed over that section or portion of the shaft, and the leather washers are flexible, and the junction between the leather washers to the hosel and the shaft, is a flexible connection which would exclude water from entering into the hosel, as stated in the specifications, page 2, lines 83 to 99.

"A neck constructed by the use of washers or the like absorbs, (152) to a certain extent, or degree, any tendency for the shaft to break at its point of entrance into the tubular socket member. Furthermore, such washers tend in a great measure, to prevent moisture from getting into and around the neck."

Q. Around the socket, isn't it?

A. Around the socket.

(Testimony of William A. Doble)

"When rubbed down and shellacked the leather washers become (153) substantially waterproof, and in fact they may be waterproof before being positioned. In positioning the washers, they will preferably be treated with some suitable cementitious material to cause the adherence of the lowermost washer to the adjacent portion of the club, and likewise of the washers to each other and to the shaft." Thereby providing a flexible sealing member positioned at the joint between the outer end portion of the socket and the shaft, and also providing a resilient cushion at the juncture of the shaft with the hosel.

MR. GRAHAM: Are you reading from the patent?

MR. LEWIS E. LYON: He ended the quote back there.

A. I quoted from the patent, and then stopped the quotation.

The patent to Isham, Defendant's Exhibit J-4, application filed April 14, 1920, discloses a hammer mounted on a shaft, with a flexible resilient bushing made of rubber fitted into the eye of the hammer, and between the hammer and the shaft. The construction of the bushing is shown in Fig. 1, and it will be observed that the shape of the shaft or handle at about the middle of its portion that extends into the socket or eye of the hammer is of smaller diameter, quite similar, and exactly similar in principle, to Fig. 4 of the first Barnhart patent: and, due to that contraction or necking in, it retains the shaft in the hammer, and, owing to the difference in (154) curvature between the inside of the socket and the outside of the handle, the thickness of this resilient rubber bushing is thicker at each end, so as to provide an extra cushioning effect, to allow, as the patentee states, page 2, commencing with line 99:

(Testimony of William A. Doble)

“The masses of the elastic cushion which are disposed in the ends of the eye, are larger than the intervening connecting mass of said cushion, and these larger masses admit of considerable amplitude in the oscillations of the handle relative to the head of the implement. Shocks transmitted from the head to the handle are therefore reduced to a minimum, the force of the blow being dissipated or absorbed by various parts of the thimble cushion.”

And on page 3, commencing with line 5:

“A hammer *of* other implement equipped with my invention—rubber-set—protects the hand, wrist and arm muscles from shock of impact and vibration, prevents the head of the implement from chipping, and enables the operator to maximize the force of a blow, thus saving the strength and labor and avoiding much of the usual fatigue incident to work with a hammer *of* a similar implement.”

This device is not limited in the specification to the use in hammers, and therefore we have in the Isham device an impact tool provided with a head and a shaft, an elastic (155) medium in the form of a bushing inserted between the shaft and the socket of the device, the shaft necked in or reduced in its sectional area within the socket, so that the material disposed between the shaft and the socket is of such form as to secure the shank in the socket, the same as I pointed out in Fig. 4 of the first Barnhart patent, and so shaped and proportioned that the rubber bushing or insert would seal and provide a flexible sealing means to exclude water from within the device.

(Testimony of William A. Doble)

The patent to Lagerblade, Defendant's Exhibit J-5, application filed June 29, 1921, discloses a golf club provided with a tapered steel tube for a handle or shaft. So it shows that this was common practice as early as 1921.

MR. GRAHAM: If the court please, I object to the witness saying that it was common practice.

THE MASTER: Yes. Just state what the patent shows here. We don't want to argue the effect of it.

A. The patent shows the head of a golf club, provided with an outwardly diverging or tapered socket. Within this socket is a tubular adapter, flexible, and, as the patent says, can be made of wood or fibre. This is a driven fit into the socket, and the adapter is provided with a tapered bore, into which the tapered tubular steel handle or shaft is tightly inserted. The tubular adapter is produced beyond the end of (156) the socket, is brought down to a thin section, and thereby provides a flexible cushion between the steel shaft and the socket, and is provided with a flexible sealing member at the thin edge of the adapter where it joins the shaft. As the inventor states, commencing with line 73, page 1:

"C is a hollow or tubular metallic shaft, which preferably tapers gradually from the grip (not shown) to the lower end, which is located concentrically within the socket. The tubular shaft is of much less diameter than the socket, and the adapter of the present invention is interposed to secure the parts firmly together and to cushion vibration and distribute the strains, as before indicated."

THE MASTER: You don't need to read all the descriptive matter into the record. Just give the page

(Testimony of William A. Doble)

and the line number. That is sufficient reference to any descriptive matter there. Just explain anything that is not understandable, and then, if you want to call attention to any particular descriptive matter, just do so by page and line, and it will probably save us time.

A. The shaft, it will be observed, is secured into the adapter and the hosel by a through pin G, so we have a taper fit, with the flexible sealing member, and the cushion for distributing the shock and vibration. And I will call the court's attention to page 2, lines 15 to 22, where it (157) points out the advantages of this construction in the prevention of the transmission of vibrations through the shaft to the operator.

Treadway, Defendant's Exhibit J-6, application filed July 14, 1922, discloses the construction of a golf club to provide torsional resilience in the mounting of the head to the shaft.

Q. BY MR. LEWIS E. LYON: Mr. Doble, is there anything particularly in this patent of importance, other than the fact that there is a steel shaft and a steel head and the section of the steel shaft within the hosel the club is slotted longitudinally in the manner similar to that disclosed by Barnhart?

A. That is the principal point showing the development of the slotted shaft, to take up the torsional, and provide torsional resilience, and also the fact that the shaft is pinned to the hosel beyond the end of the longitudinal slots.

Q. Refer to the Heller patent, Defendant's Exhibit J-7.

A. I think we might as well take up the re-issue of that patent, which is—

(Testimony of William A. Doble)

Q. (Interrupting): Is there any difference in the disclosures made by the drawings between the Defendant's Exhibit J-7 and Exhibit J-8?

A. None in the drawings, but in the re-issue of (158) it it brings out the added advantage of the torsional resilience.

MR. GRAHAM: When was that re-issue applied for; I haven't a copy of it.

MR. LEWIS E. LYON: April 8, 1927.

MR. GRAHAM: That was more than two years after the issuance of the original.

THE WITNESS: No. The original—

MR. GRAHAM (Interrupting): Was issued September 1, 1925?

THE WITNESS: The original September 1, 1925, and the application for re-issue April 8, 1927.

MR. GRAHAM: I thought you said 1928.

A. No, 1927. This patent shows a golf club with a tapered steel tubular shaft, the head of the club being provided with a tapered socket and interposed between the head and the tubular shaft is a flexible rubber cushion 7, whereby this rubber cushion provides for torsional resilience as between the head of the club and the shaft, also a cushion to absorb the shock; the upper end of the hosel is tapered to a thin edge, and there is a flexible sealing means which goes around the upper end of the hosel, the upper end of the resilient bushing which projects beyond the end of the hosel, and the flexible joint is thereby provided as a sealing means. The specifications, commencing with line 30, page 1, pointed out the advantages of the elastic (159) rebound of the head portion relative to the shaft, from a vertical and torsionally

(Testimony of William A. Doble)

displaced by the impact; this torsional resiliency being, in a large degree, lacking in steel shaft clubs as present used.

MR. GRAHAM: Are you reading from the re-issued patent?

A. Re-issued patent. That point which I read is the addition to the original patent, namely, in the later use there is introduced—

MR. GRAHAM (Interrupting): You have read that once, haven't you?

A. Partially, but I will give it to you completely, if you want it.

MR. GRAHAM: I don't care for it, if I can have a copy of the patent.

A. You will find it in the Gazettes. And, therefore, this device is provided likewise with the flexible sealing member, and though the illustration shows a wooden head, on page 2 it states "That the features of the invention may be similarly embodied in the many other types of club construction, for instance those having a metal head, such as midiron."

Q. BY MR. LEWIS E. LYON: That is the patent under which Spalding makes its clubs, is it not?

MR. GRAHAM: Objected to as calling for a conclusion, (160) there is no evidence of that kind.

THE MASTER: Sustained.

A. Then, in the Maas patent, Defendant's Exhibit J-9, application made on May 23, 1923, shows a golf club with a flexible sealing member over the upper end of the hosel and produced up onto the shaft; the upper end of the hosel being tapered to practically a feather edge, and the flexible sealing member closing over this thin edge, which would provide for a flexibility at the juncture of

(Testimony of William A. Doble)

the shaft with the head, and would therefore provide a means for waterproofing the interior of the hosel, as the celluloid ferrule makes a tight joint between the shaft and the hosel of the club head. The patent to Reach, et al., Defendant's Exhibit J-10, application filed May 12, 1926, discloses a golf club provided with a tapered tubular steel shaft; a club head provided with a tapered bore in the form of a socket, a tapered bushing within the socket which is tapered to conform to the taper of the shaft. This patent also discloses a flexible sealing member surrounding the joint between the thin upper edge of the hosel, the fiberloid bushing within the socket and extended or produced over the fiberloid coating of the shaft, thereby providing a flexible sealing member between the upper end of the hosel and the shaft, and the hosel being tapered thin at its upper end, which will provide elasticity at that point. The description of the wrapping of the fiberloid, which is of a material on the order of celluloid, is on page 1, commencing (161) with line 86.

Q. BY MR. LEWIS E. LYON: Proceed with the matter in the patent.

A. The Mattern to Crawford—

THE MASTER (Interrupting): Does that last patent teach the use of a bushing to reduce shock or a sleeve to reduce shock?

A. That is the rubber?

THE MASTER: Yes.

A. It shows a bushing in there made of fiberloid, which would have the effect of reducing shock.

Q. BY MR. LEWIS E. LYON: That is also true of the rubber sleeve disclosed in the Heller patents in Defendant's Exhibits J-7 and J-8?

(Testimony of William A. Doble)

A. More so, as it is much more resilient in that position than is the fiberloid.

Q. And in the Heller patent, Defendant's Exhibits J-7 and J-8, that rubber sleeve forms, does it not, a seal between the shaft and the club head?

A. It does, flexible.

Q. Now, the Mattern patent, Defendant's Exhibit J-11, merely discloses the use of a wrapping of the joint of the shaft and hosel of the club, of the nature to form a joint at that section which is impervious to moisture, does it not?

A. Yes, and the upper end of the hosel is tapered (162) off to a thin edge, where it joins the shaft.

Q. So as to permit of a more flexible type joint, isn't it?

A. Yes; it states on page 2 of the specifications—

THE MASTER (Interrupting): That is very, very old, the wrapping of these joints.

A. Yes, and this is interesting in that it points out the use of a rubber material which will produce a flexible wrapping. This patent is also interesting, as he states on page 2, lines 110 to 124, that he is not limiting the invention to golf clubs; that it is valuable also in the manufacture of fishing rods, polo mallets, and many other purposes.

Q. BY MR. LEWIS E. LYON: Is there anything in particular that you desire to point out from the patent, Defendant's Exhibit J-12, not shown in the previously mentioned patents?

A. Yes, in J-12 the complete shaft and its lower end is provided with a vulcanized rubber jacket which is tapered at the portion that enters the tapered socket or

(Testimony of William A. Doble)

hosel of the club, is a tight fit, and thereby provides both a flexible seal to keep water out of the hosel and also provides a cushion or yielding at the juncture of the hosel and the tapered end of the shaft. In other words, providing a shock absorber due to the flexibility of the vulcanized rubber jacket.

Q. Now, this patent to Pryde, et al.,—(163)

A. This patent also shows—

Q. (Interrupting): I mean Pryde and others states that one of its reasons is to reduce shock, does it not?

A. Yes, that is its purpose.

Q. And it discloses the use of a rubber bushing interposed between the hosel of the club head and the shaft, does it not?

A. It does.

Q. For the purpose of providing a so-called no-shock?

MR. GRAHAM: I object to counsel stating what the purposes were.

THE MASTER: Yes.

Q. BY MR. LEWIS E. LYON: I mean, as stated in the patent.

A. "This invention relates to new and useful improvements in golf clubs, and it is the object thereof, among other things, to provide a golf club wherein the shaft may have the requisite flexibility without torsional strain and without transmitting therethrough to the player using the club the shock or force of the blow or impact upon the golf ball. Defendant's Exhibit J-13, a British patent in 1913, to Saunders, discloses in 1913 the use of a tubular steel tempered shaft for golf clubs. There are several means disclosed for securing the tapered end of the shaft

(Testimony of William A. Doble)

within the hosel; the most interesting one is disclosed in Fig. 4, which shows a hosel with a— (164)

Q. (Interrupting): Mr. Doble, just a minute there. Is the showing of Figure 4 different in any way from the structure or manner of securing the head as shown by Defendant's Exhibit G?

MR. GRAHAM: We object to that, as an old form of shaft.

MR. LEWIS E. LYON: You have not been willing to admit before that that is old.

MR. GRAHAM: I think that appears in the record.

A. This Fig. 4 discloses substantially the means for attachment, as shown in Defendant's Exhibit G.

THE MASTER: Does it have any disclosure as to the use of a rubber bushing or resilient bushing or a slotting to reduce shock?

A. No, your Honor. It simply shows the hosel (165) tapered up towards its upper end to a very thin degree so as to produce resilience at that point, as pointed out in Figs. 1 and 6 of the second Barnhart patent, and thereby the deflection would be transmitted through a greater length.

THE MASTER: The same as in any other club of that fit?

A. It is a tight tapered fit, but he also provides that he would warm up the socket, and get the benefit of a shrink on the shaft, so as to increase the tightness.

THE MASTER: Well, we are not concerned with that now.

A. In other words, this is substantially the construction of defendant's club, below the little rubber collar.

MR. LEWIS E. LYON: You may cross-examine.

(Testimony of William A. Doble)

CROSS-EXAMINATION.

Q. BY MR. GRAHAM: As I understand your testimony with relation to this British patent you just referred to, Defendant's Exhibit J-13, is that the tapered end of the shaft is secured in the hosel by means of a rivet, is that correct?

A. Not entirely. The shaft is a tight driving fit, the tapered end of the shaft is a tight driving fit into the tapered hosel, and is then further secured by a cross rivet, (166) and in putting them together the heat is used, so as to shrink it that much tighter onto the tapered end of the shaft, and also makes provision for electrically spot welding the extreme end of the shaft to the hosel.

Q. Well, the shaft has two ends. One end is the handle and the other end is the smaller tapered end which is secured to the hosel; is that correct?

A. Yes, and that is the end I have been talking about.

Q. In that illustration in Figure 4 of the British patent, the rivet or pin goes through the tapered end of the hosel; is that correct?

A. No. It *does* through the hosel at about the middle of its length.

Q. And through the tapered end of the shaft, I meant to say.

A. And it goes in through the tapered end of the shaft. It goes through the tapered portion of the shaft at about its—

THE MASTER: Let us not argue about this. How far up from the end, assuming that that is a normal size club there, how far from the end of the shaft is the pin put through?

A. It is half-way of the length of the hosel.

(Testimony of William A. Doble)

Q. BY MR. GRAHAM: Did I understand you to say that is substantially like the defendant's structure?

A. Substantially like the defendant's structure, (167) in the tapered fit of the shaft and the tapered hosel, and the pin driven through the hosel and the shaft at about the middle of the length of the hosel.

Q. You don't call that the end of the shaft, do you?

A. No.

Q. Where does the end begin and where does it stop?

A. The end begins and stops at the end, and no place else.

THE MASTER: Just point out what is the end there.

A. Here, where my finger is, is one end of the shaft, and now at the other end of the shaft, and that is strictly all the end of the shaft means, in accordance with the Barnhart patents.

THE MASTER: Your definition is a two dimensional thing; is that it?

A. Yes, and that is what the patents mean.

THE MASTER: You couldn't put a pin through something that only had two dimensions?

MR. LEWIS E. LYON: The patent does not disclose putting a pin through.

MR. GRAHAM: I beg your pardon. I call your attention to Figure 5 of Barnhart's second patent, Exhibit 2, I believe, and that has a pin through it, hasn't it?

A. Yes, it has, and as near the extreme end of the shaft as they could get it.

Q. You wouldn't call that through the end? (168)

A. Approximately there. As far as the effect is concerned, it is between the end of the spiral slots, where they terminate, and the end of the shaft. Of course, to

(Testimony of William A. Doble)

put a pin through you have to come back far enough to have metal to get it through.

Q. Calling your attention to this Figure 4 in the British patent, Defendant's Exhibit J-13, I notice a pin is through substantially half-way from the bottom to the top of the hosel; is that correct?

A. Yes, that is what I said.

Q. As far as that construction is concerned, as long as the shaft metal is touching the walls of the hosel—

A. You are speaking too loud, Mr. Graham. I can't hear you.

Q. I beg your pardon. As long as the metal of the shaft is in contact with the metal of the hosel, it wouldn't make any difference in the construction of the club shown in Figure 4 of the British patent whether that pin was higher or lower on the shaft, would it?

A. Well, as a matter of mechanics, we would put it substantially in the middle.

Q. I didn't ask you that. Please answer the question.

A. Yes, it might.

Q. Might what?

A. Because, if you put it right at the extreme end of *of* the shaft, the small amount of metal there would be weak, (169) and there would be a tendency for the end of the shaft to split.

Q. Well, I expect you to use ordinary common mechanical sense that a man ordinarily skilled in that kind of work would use. I asked you whether or not that pin could not be put through above or below where it is shown in Figure 3 of the drawing, without in any sense weakening or detracting from the value of the connection between the shaft and the hosel.

(Testimony of William A. Doble)

MR. LEWIS E. LYON: Objected to as argumentative, and already asked and answered.

THE MASTER: Overruled.

A. Physically it could be put above or below, but mechanically it is better to put it in the mean of the length, so as to keep the stresses, if it was put too high, from concentrating at the hole of the pin and causing the shaft to break, or, in putting it *to* near the extreme end, causing the shaft to split. The maximum value is gained by placing it just as Saunders shows in his Figure 4.

Q. Then I understand that the only limits as to the point which that pin should be placed through there are that it must not be placed so near the upper end of the hosel as to weaken the shaft where it bends over the hosel, or that it must not be put so near the lower end of the shaft that there is not sufficient metal left, when it is likely to cause the shaft to break at that point; is that correct? (170)

A. That is about the mean position, but you can't do that in carrying out the teachings of the Barnhart patent.

THE MASTER: No, not the Barnhart patent. Let us not get into that now. You can answer that yes or no.

THE WITNESS: I think it has been answered.

THE MASTER: Yes, but you went on to considerable more there.

Q. BY MR. GRAHAM: In all these patents that you have testified to in the prior art, will you please show me one patent where you have a metal shaft—

A. Mr. Graham, would you please lower your voice?

Q. Pardon me. I am sorry. Will you point out one patent in the prior art which shows a metal shaft engaged within and in contact with the metal walls of the hosel, in which provision is made for absorbing shock?

(Testimony of William A. Doble)

MR. LEWIS E. LYON: That is objected to as immaterial. There is no disclosure in the two patents in suit of any absorption of shock.

THE MASTER: Overruled.

MR. LEWIS E. LYON: Note an exception.

A. Yes. Take the Treadway patent, Defendant's Exhibit J-6.

Q. What is the provision there made for absorbing (171) shock?

A. You have those slots, and then you have a soft wood filler core 13, filling the inner end or the inside of the tubular channel.

Q. All right. Is that the nearest one you can find, and the only one you can find?

A. Well, that answers your question.

Q. Please point out any others.

THE MASTER: How about those Lard patents?

A. The Lard patent, J-3, shows—

MR. LEWIS E. LYON: And how about the Robertson patent, J-1?

MR. GRAHAM: I think the witness should testify to this. If we are all going to help him he may find lots of things.

A. The Lard patent, Defendant's Exhibit J-3, shows the metal hosel, the tapered end of the shaft driven into it, and—

Q. Pardon me. Where is the metal hosel? (172)

A. At 4, the tapered metal hosel.

Q. As I read the description, 4 is a plug inside of the shaft.

A. As I read it, 1 is the plug.

THE MASTER: 4 is the tubular socket member.

(Testimony of William A. Doble)

MR. GRAHAM: Are you reading the Lard patent?

THE MASTER: Yes, the first page, lines 97 and 98.

MR. LEWIS E. LYON: You are reading the wrong Lard patent, Mr. Graham.

MR. GRAHAM: There is an extra patent there that I didn't know about.

THE WITNESS: I think there is an extra copy of that in your jacket, Mr. Lyon.

MR. GRAHAM: How is that?

THE WITNESS: I think there is an extra copy of that Lard patent in your brief bag, Mr. Lyon.

MR. LEWIS E. LYON: Here is a copy, Mr. Graham.

MR. GRAHAM: What is this exhibit number?

THE MASTER: J-3

MR. GRAHAM: No wonder I couldn't find those passages he was reading there.

Q. BY MR. GRAHAM: Does that show a metal shaft, Mr. Doble?

A. It doesn't specify whether it is metal or wood. This refers to it as a shaft.

Q. In 1917 are you prepared to state whether or (173) not they had metal golf shafts?

A. Certainly.

Q. Upon what do you base that statement?

A. Well, here we have the British patent of 1913, which is on the basis of metal shafts, and from the patent art.

Q. Now will you look at the end section on those shafts in the Lard patent you have just been referring to?

A. That indicates the drawing of a wooden shaft.

Q. There is nothing in the Lard patent, is there, that states that there is a metal shaft placed in this sleeve, this metal sleeve, is there?

(Testimony of William A. Doble)

A. I think not. I think it makes no reference to the material of which the shaft is made.

Q. Are there any others? You have got now Treadway and Lard.

THE MASTER: No. The witness didn't mention the Lard patent. I just asked him about it. Does that show such an arrangement?

A. Such an arrangement, with the explanation I have made, that the shaft is not specifically stated, what it is made of, but it indicates wood.

MR. GRAHAM: I would like to come back to that Lard patent. I haven't had a chance to read it.

Q. Now, referring to the Treadway patent, which you mentioned as an example, Defendant's Exhibit J-6, there (174) is nothing shown in that patent in the way of placing any cushioning material between the shaft and the hosel, is there?

A. No, but there is in those other patents, like Lagerblade and Heller.

MR. LEWIS E. LYON: I don't believe there is in the patents in suit either.

THE MASTER: Well, Mr. Graham confined the question to where you have a metal to metal fit between the shaft and the hosel, so that eliminates any question of any patents such as Heller and Lagerblade, and so forth.

A. I would say in Treadway that I would not call that a metal to metal fit. It is a metal to metal contact, because there is necessarily a freedom of relative rotation between the two, to provide for the torsional resilience.

Q. BY MR. GRAHAM: I will ask you to go one step further. Do you find any of these patents that you have referred to which discloses a tapered metal shaft

(Testimony of William A. Doble)

inserted in a metal hosel, in which the bore of the hosel at its outer end is tapered outwardly?

THE MASTER: Tapered outwardly to a greater degree than the taper on the shaft; is that it?

MR. GRAHAM: Yes, forming a space between the shaft at the outer end of the hosel and the hosel itself.

A. Yes. The Kavanaugh patent, J-2, shows that (175) diverging socket with resilient means to absorb the shock.

Q. You are talking about this broom handle?

A. Well, it is not limited to brooms—pitch forks, spades, shovels and other things that produce shock or sudden change in forces. There is your basic idea.

Q. I didn't ask you that. I asked you whether or not you saw a metal tapered shaft seated in a metal socket. Where is that shown in the Kavanaugh patent?

A. That isn't shown in the Kavanaugh patent.

Q. Then your answer is incorrect, isn't it?

A. Well, it is as I got your question. Limited to that specific patent, no.

Q. All right. Now go a step further. Do you find in any of those patents a tapered steel shaft entering a socket in the hosel, the metal of the shaft engaging the walls of the hosel, the walls of the hosel near its outer end flaring outwardly, leaving a space between the shaft and the end of the hosel, and any material in that space at the outer end of the hosel and between the outer end of the hosel and the shaft of a yielding or shock-absorbing nature? Do you find anything of that kind in the patents that you have referred to?

MR. LEWIS E. LYON: That is objected to as immaterial. (176) There is no such disclosure in issue in

(Testimony of William A. Doble)

this case, and no such disclosure is found in either of the patents in suit.

THE MASTER: Overruled.

MR. LEWIS E. LYON: Note an exception.

THE WITNESS: Now, may I have that question again, please? Let me have it in sections.

THE MASTER: He said there wasn't any with a space there.

THE WITNESS: Yes.

THE MASTER: Are there any with that space, plus rubber or something in that space?

A. I said—

THE MASTER: It would be the same answer, I think, wouldn't it?

A. With that metal shaft in contact with the—

THE MASTER: Yes.

A. No.

Q. BY MR. GRAHAM: If you interpose a piece of rubber between two sections of metal, does it have any cushioning effect?

A. That depends upon the construction, if there is a freedom of movement relative between them; if the two members are rigidly secured to each other, in this club, (177) Plaintiff's Exhibit 3, there can be no cushioning effect because the shock has been transmitted directly from the club to the steel shaft.

MR. GRAHAM: I move to strike out all of the witness' answer with reference to this club, and what happens to that club. I didn't ask him about that. I asked the simple question whether or not rubber interposed between two pieces of steel, whether or not there was a resiliency or shock absorbing feature in the rubber.

(Testimony of William A. Doble)

A. I think it can be answered more directly.

MR. LEWIS E. LYON: It is simply illustrative of his testimony.

THE MASTER: We will take another answer.

Q. BY MR. GRAHAM: Withdraw the question, and frame it another way. Assuming that you have two pieces of metal, between which there is relative movement, and interposed between the two pieces of metal you have a strip or piece of rubber; what is the function of that rubber between the two pieces of steel?

MR. LEWIS E. LYON: Objected to as indefinite on the grounds it is no indication of how the members are secured together and what the construction of the rubber is.

THE MASTER: It is a hypothetical question. If the witness can answer it, all right.

A. If the two pieces of metal are simply separated by a rubber mat, as it were, there would be some shock absorbing (178) characteristics when the pieces of metal move with respect to each other.

Q. BY MR. GRAHAM: Now, I call your attention to this club, Defendant's Exhibit G—Is this club in evidence, your Honor?

THE MASTER: No.

Q. BY MR. GRAHAM: Assuming that the statement in the Pryde patent, which has been offered in evidence as Exhibit J-12, is correct, wherein, at page 1, line 91, it says: "With a brassie, midiron club, or the like, wherein the head is made of metal, the tubular metal shaft of the golf clubs heretofore made, have frequently broken or bent opposite the upper face of the head."

A. Where are you reading from?

(Testimony of William A. Doble)

Q. I read it correctly. Line 91, page 1, Exhibit J-12. Now, that is the form of the earlier club where you had a steel shaft simply extending and fitting tightly within the hosel, as I understand it; did you understand it that way?

MR. LEWIS E. LYON: The Pryde patent that you read from?

MR. GRAHAM: Yes.

A. There is no disclosure here as to how the upper end of that hosel is made or how it would contact with the shaft. (179)

Q. BY MR. GRAHAM: Don't you take that description to mean the metal shaft and the metal hosel like this exhibit, Defendant's Exhibit G?

A. Yes, it is—

Q. (Interrupting): I am not speaking of the purpose as shown in the Pryde patent, it is the ordinary club. Can you say whether or not that is the type of club?

A. It undoubtedly means that adjacent to this upper edge of the hosel is where the fracture takes place, but there is no showing as to that construction and whether the shaft was a tight fit or otherwise at that point.

Q. What does it mean where it says it breaks opposite the upper end of the hosel?

A. Just as I stated, it would be the line in the plane of the upper end of the hosel.

Q. Now, from your experience in mechanical affairs, why would you say it broke at that point?

A. That is a statement. I am not verifying the correctness of that statement.

(Testimony of William A. Doble)

Q. Assuming that it is correct?

A. Well, if I assume that it is correct, it is then because the stresses are concentrated in that plane.

Q. And are they so concentrated in that plane in view of the fact that the metal shaft is tight within the hosel and that the shaft's first point of bending or flexing (180) would be right where it enters the hosel?

A. No, because we take in this shaft here, the hosel is very thin at the upper end, the same as in the Figure 1 of the Barnhart second patent, so that the elasticity of that metal hosel would yield, as pointed out in the Barnhart second patent.

Q. Well then, I will ask you to look at Defendant's Exhibit H, and assume, for the purpose of the question, that that is merely a hosel with a steel shaft entering it and engaging the walls of the hosel throughout its length.

A. What about it? (181)

Q. Then is it not a fact that the breaking at the point as described in the Pryde patent would be due to the bending action of the shaft over the sharp edge of the hosel?

A. If that broke there, that would be a sharp kink in the shaft.

Q. Do you know anything about the breaking of golf shafts?

A. I have examined a lot of them.

Q. Have you ever seen any of the type I have referred to?

A. I think so.

Q. All right now, the one that you have in your hand, you see a shoulder down inside the hosel, don't you?

A. Yes.

(Testimony of William A. Doble)

Q. And isn't that the point where the strains would be localized in any bending action that takes place in the shaft?

A. It would be near that.

Q. But it would be due to that sharp shoulder, wouldn't it?

A. In this particular club it would be due to the fact that the shaft is an absolute rigid fit in the tapered bore of the hosel, and therefore as there is no chance for any other movement between the shaft and hosel, the maximum fibre stress would be approximately at that shoulder. (182)

Q. Assuming that this gasket is out, assuming that there is nothing in that cavity in the end of the hosel, then there would be nothing beyond that shoulder for engagement with the shaft, to cushion the shaft in any way, would there?

A. No. The shaft would not contact with the walls of that counter-bore.

Q. But the shaft would bend in that cavity, wouldn't it, above the shoulder?

A. It would bend or deflect.

Q. All right, now suppose that you interposed in that cavity a material having a resilient quality, a cushioning quality, that would, to a certain extent, absorb that bending action or shock, would it not?

A. Practically I should say not, for the reason that your shaft is an absolute rigid fit within the taper of the hosel, and therefore there could be no cushioning of the shock on the shaft through the instrumentality of this rubber bushing, because the shock has already been transmitted to the shaft, due to its absolute firm engagement

(Testimony of William A. Doble)

with the hosel, and therefore there can be no cushioning effect.

Q. Mr. Doble, as far as the connection between the shaft and hosel is concerned, below the shoulder, it is just the same as though it was one piece, is it not, the shaft and hosel is all one piece? (183)

A. You could say that.

Q. Now, you testified, however, there was a movement between the shaft and the hosel above that shoulder, haven't you?

A. I don't think I testified just that way. There is a chance for a slight springing action above that shoulder.

Q. And you have testified that such a springing action would take place at that point, haven't you?

A. At approximately that point, yes.

Q. All right then, if there is a relative movement at that point, that relative movement would be cushioned, would it not, by the interposition of some shock-absorbing medium in that cavity?

A. Theoretically it would be possible, but this being a yielding substance, there would be no practical cushioning from the direct impact of the club to the ball. It would be too minute.

Q. What do you base that on?

A. On my knowledge of mechanics.

Q. Wouldn't that depend on the density of the medium interposed between the hosel and the shaft?

A. Yes, but this is a very resilient material and, as you can see, it has no great power of resistance.

Q. Well, it has more resistance than air, hasn't it? (184)

A. Yes.

(Testimony of William A. Doble)

Q. Then it would operate differently with that in there and when it was not?

A. Practically, I should say not. I don't think it would be possible to measure. Theoretically you could say yes.

Q. When you have a little vibration between such a thing as a golf shaft and a hosel, it would take very little to stop such a vibration?

A. The vibration is different from the shock.

Q. Answer the question, please.

A. Make the question distinct from the question of shock we have been getting at.

Q. That is very plain, you know what vibration is, don't you?

A. I certainly do.

Q. Then answer the question.

A. May I have that question?

(Question read by the reporter)

A. I would not agree to that, because very little is an indefinite term, I don't know what you mean by it.

Q. Do you know what is meant by a sting?

A. Yes.

Q. Sting of a golf shaft?

A. Yes, I have felt it.

Q. What is it due to?

A. Due to a vibration. (185)

Q. And that vibration is due to some looseness in the club at some point?

A. O, you might call it a resonance.

Q. Where does that take place?

A. That takes place throughout the length of the shaft, substantially the length, not taking into consideration the grip.

(Testimony of William A. Doble)

Q. It is your testimony that with a gasket in there of resilient material, that there would be no different effect, I will say cushioning effect, than there would if there was simply air in that cavity, is that correct?

A. I don't think I testified to that.

THE MASTER: You said theoretically yes, but from a practical standpoint no.

Q. BY MR. GRAHAM: That is your testimony, wasn't it?

A. Yes, sir. Practically, I don't think you could measure it, that is, unless you devised some ultra sensitive testing mechanism, but not in the sense of a man's feeling it in playing the game.

Q. Did you ever try one with the cushion out, and one with it in, to see whether or not there was any principal difference in the feel?

A. No.

Q. Now, calling your attention to Defendant's Exhibit J-1, that is a fishing rod, isn't it?

A. It so states, but analogous art. (186)

MR. GRAHAM: I move to strike out the words "analogous art" as a conclusion of the witness.

THE MASTER: That part may be stricken.

Q. BY MR. GRAHAM: Now, the purpose of the construction shown in that patent is such that the rod may bend in an arc from the very tip to the very end of the butt, isn't that correct?

A. Yes.

Q. Isn't that a different problem than that of the Barnhart patents?

A. I think only reversed. The B is the hosel and the A is the shaft, and you get that yielding or bending or

(Testimony of William A. Doble)

deflecting of the small shaft A in the enlarged opening C. In other words, it can deflect throughout its length.

THE MASTER: The bending inside there would be in the opposite direction, wouldn't it, from that in the Barnhart shaft?

A. I think in the same direction.

Q. BY MR. GRAHAM: Calling your attention to Figure 5 of the second Barnhart patent, I believe it is Plaintiff's Exhibit 2, would it be possible to get the effect in that construction that is produced by the Robertson fishing rod construction?

A. Substantially, yes. They both show a chambered socket and an elastic sealing member, and the rod bending throughout its length within the cavity or chamber of the (187) socket.

Q. Where is there a cavity or any elastic sealing member in Figure 5 of the Barnhart patent?

A. Well, if you look at Figure 5 you will notice that there is an enlarged cavity within the hosel providing a clearance between the shaft and the inner wall of the hosel.

Q. Where is that, the outer end of the hosel?

A. Towards the outer end, yes. You see Figure 6—

Q. (Interrupting): I am talking about Figure 5.

A. Oh, Figure 5. Figure 5 has no enlarged cavity; the shaft being a loose fit or a working fit in the hosel. I pointed that out in my explanation of the patent.

Q. But in that form the shaft cannot bend from tip to tip, as the principle disclosed in the Robertson patent, can it?

A. It certainly can, because you have got those spiral slots that provide a resilience, so that it can bend.

(Testimony of William A. Doble)

Q. How can the shaft bend in an arc in the hosel when it is substantially in engagement with the walls of the hosel throughout its length, except at the upper end?

A. For the simple reason that you have got helical or spiral slots, so that that is simply a spiral band of flexible material, and when you put the strain in there that band of flexible material simply yields and deforms. (188)

Q. How can it bend out of a straight line if it is engaged in the walls of a hosel?

A. Because the walls are in the form of a spiral ribbon, and they yield when subjected to a tension.

THE MASTER: It winds up?

A. It bends in an arc, too. It changes the relation of that spiral ribbon so that it bends.

THE MASTER: But the ribbon winds up?

MR. GRAHAM: I think it is apparent to everybody, so there is no use of spending any more time on it.

Q. Calling your attention to Defendant's Exhibit J-5, the Lagerblade patent, that is a wooden adapter that is shown there, isn't it, wooden or fibre adapter?

A. Wooden or fibre adapter and cushioning member, sealing member.

Q. That pivoting member there simply acts as a fulcrum, if the adapter is a cushioning member?

A. Acts as a what?

Q. As a pivot.

A. No, it is put in there simply as a pin to hold and insure the parts staying in there.

Q. What do you mean by the wooden part there, the fibre part being a cushioning member?

A. Because it is resilient and forms a very excellent cushion and absorbs the shock from being transmitted

(Testimony of William A. Doble)

from the club head to the shaft, and also distributes that stress, so (189) that it would not concentrate at the one plane, and therefore the stresses are distributed, and that prevents fracture.

Q. What is meant by resonance?

A. Resonance is a resounding which is due to accumulative vibration, like in a tuning fork. The series of vibrations excite other vibrations.

Q. Then, in the sense that you have used the word "cushioning" lead would be a cushion, wouldn't it?

A. No, it would not. Lead is an inert metal, and it has no cushioning characteristics whatever.

Q. Does a wooden handle have a cushioning characteristic?

A. Very much so.

Q. Did you ever lose the head of an axe because it was loose on the wooden handle?

A. That is not your question. It may happen you leave an axe out in the sun, and it is not properly fitted, it might fly off.

Q. I have had hammers that are still tight, tight on the shaft.

A. The looseness that you speak of is due to climatic effects, leaving it out in the sun, and causing the wood to shrink.

Q. And that would not have any effect on a wooden adapter to a golf club, would it? (190)

A. No, because they are protected and don't lay around in the hot, dry sun.

Q. Calling your attention to J-9, do I understand (191) your testimony to be that that has an elastic band around it?

(Testimony of William A. Doble)

A. It certainly has a flexible sealing member.

Q. Will you answer my question, please?

A. Yes, it certainly has.

Q. An elastic band?

A. It is an elastic sleeve. Of course, a band is supposed to be narrow in reference to its length, and this is wide with reference to its length, but it is an elastic, flexible sealing member and a ferrule.

Q. I call your attention to line 70 on page 1 of that patent, where it says "a ferrule of peculiar formation and adaptability for the purposes of my invention. The said ferrule is constituted—"

A. That is line 70?

Q. Yes. "The said ferrule is constituted as a tube of plastic material, it possessing the properties of shrinking and hardening when heated or exposed to the atmosphere." would that indicate to you any elastic qualities?

A. It would when I turn over and see in the next—

Q. I am asking you about that part that I just read.

A. Not without going into it further. But when you find out that he uses celluloid for the proposition, then it explains it fully and shows that it is an elastic flexible (192) material.

Q. Is celluloid elastic?

A. It certainly is.

Q. It can be pulled out of shape and it will regain its original shape?

A. Yes. They make balls out of it.

Q. What kind of celluloid are you talking about?

A. I am talking about celluloid which is a nitro cellulose camphor compound. It is highly flexible and elastic,

(Testimony of William A. Doble)

and it is used for building up testing machines for determining elastic characteristics and points of stress in metal and steel structures, and when the stress is removed it returns to its original condition of shape and size.

Q. Calling your attention to Exhibit J-11, the structure shown there is a means for fastening the shaft to the hosel, isn't it?

A. And to provide an impervious or—

Q. Please answer the question.

A. Yes, and to provide an impervious—

MR. GRAHAM: I move to strike out the balance of the answer.

THE WITNESS: Then it isn't answering it complete. I wish the privilege of explaining the answer.

Q. BY MR. GRAHAM: I asked you whether or not it was a fastening means for securing the shaft in the hosel.

A. It is, but not limited to that. (193)

Q. You say it is to keep the moisture out of the— I am asking you, not what the patent says.

A. Yes. That is the teaching of the patent. It is a metal shaft driven tight into a tapered metal hosel, with a thinner upper edge, and with this holding and sealing means around it at the junction.

Q. It is copper wire or something of that kind, isn't it, strands connected together by soldering?

A. No; it is not limited to that. At page 2 it says: "In event that material other than metallic wire is employed, for instance, strands having rubber characteristics, such strands may be closely wrapped into tight conformity to the contour of the joint and subsequently united by vulcanizing, in situ, to form a continuous sleeve of

(Testimony of William A. Doble)

tubular form, which conforms closely to the contour of the joint." And above that it refers again to making a flexible, pliable character of device.

Q. Now, in the Reach patent, J-10, the club head and hosel has a reverse taper from that shown in any of these clubs, or in the patents in suit, hasn't it?

A. I think so. The taper in the shank of the head is tapered downwardly, that is, it is a larger diameter at the lower end than at the upper end.

Q. And that sleeve that is put in there is not an elastic sleeve, is it, calling your attention, beginning line 60 on page 1? (194)

A. He doesn't say elastic. Pyroxolin, of course, is an incorrect term, as that is what you might call the raw material.

Q. I am not talking about the wrapping and the reference to Pyroxolin. I asked you a question about the sleeve that is interposed between the shaft and the hosel.

A. That is what I am talking about. Pyroxolin is the raw material, such as gun cotton, and this is made of something of that kind as a base.

THE MASTER: This is described as a cellulose compound of Pyroxolin.

MR. GRAHAM: He refers to that above as having the quality of compressibility without elasticity.

THE WITNESS: Well, he is wrong in that, because all the cellulose compounds—

Q. That is the disclosure of the patent, isn't it?

A. That is what he says there. It is not the disclosure of the patent. The real disclosure of the patent is the sleeve of cellulose compound, and that is elastic and flexible.

(Testimony of William A. Doble)

Q. I believe you testified on cross-examination that there was no mention in these two patents in suit of any shock-absorbing quality or anything of that kind?

A. No. It discusses the question of torsional resilience and flexibility, and I don't remember the term "shock" being used whatsoever. It is all to provide means (195) for torsional and longitudinal resilience.

Q. Calling your attention to Plaintiff's Exhibit No. 1, page 1, you will notice there, beginning with line 18, that it speaks about the objects of the invention, and then goes on to enumerate and give these different objects numbers?

A. Yes.

Q. Beginning with line 60, on page 1: "Seventh, to provide a golf club of this class whereby the shock often imparted through the shaft to the hands of the player, will be reduced to a minimum."

A. At line 70?

Q. 60.

A. Yes. That is what the—that is true. But that is due to the slotting of the end of the shaft to produce the torsional and longitudinal—

Q. I didn't ask you that.

MR. GRAHAM: I move to strike out that part of the witness' answer.

THE MASTER: Yes, that may be stricken.

Q. BY MR. GRAHAM: Calling your attention to the second patent, on page 1, beginning with line 47: "Seventh, to provide a golf club having a shaft-positioning socket, on its head and a shaft mounted with one end within the socket and shiftable relative to the outer end of the latter, said socket being so constructed as to

(Testimony of William A. Doble)

prevent buckling of the shaft (196) at or near the outer end of the socket." That has reference to that cavity in the end of the socket, does it not?

A. Well, it has reference to more than that.

Q. I ask you to answer that question. It has reference to the cavity in the end of the socket, does it not, where it says "a shaft mounted with one end within the socket and shiftable relative to the outer end of the latter"?

A. Now that refers to what?

Q. That refers to the clearance in the outer end of the socket, does it not?

A. It refers to the fulcrum or pivot point which is produced by the flaring of the upper end of the socket.

Q. And that portion that I have just read to you has no mention of any slots, either longitudinal or spiral, has it?

A. That particular object?

Q. Yes.

A. No, but taking the entire specification—

Q. I am not asking you that. Answer the question.

A. I say no. I am explaining it.

Q. That is all.

A. Taking the specification as a whole—

Q. I am not taking the entire specification. I wish the witness would answer the question. (197)

THE MASTER: You will have an opportunity on redirect to go into that.

MR. GRAHAM: That is all.

THE MASTER: Any redirect?

MR. LEWIS E. LYON: Yes.

THE MASTER: How much?

(Testimony of Jack Malley)

MR. GRAHAM: Have you any other witnesses?

MR. LEWIS E. LYON: No.

MR. GRAHAM: I want to call one short witness. Can't we finish tonight? Have you got a matter set, your Honor?

THE MASTER: I have got to take this thing up that I had at noon.

MR. GRAHAM: I have got a witness here from Pasadena. He is with a golf club there, and I don't want to ask him to come again. I put him under subpoena to get him here.

THE MASTER: Do you want to withdraw Mr. Doble and put him on now, out of order?

MR. LEWIS E. LYON: I have no objection.

THE MASTER: Let us withdraw Mr. Doble and call this other witness

JACK MALLEY (199)

called as a witness in behalf of the plaintiff in rebuttal, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GRAHAM

I live in Pasadena. My business is professional golf. I have been engaged in that business since 1914. I am at present employed at the Pasadena Municipal Golf Course, Pasadena. I had had experience in making golf clubs, 20 years experience at club-making. I have made clubs or shafts and fitted them to clubs to the extent of assembling together all the heads and shafts from the factory. A club maker is considered an assembler. I have handled practically every make of golf club that is on the American market, as well as some foreign makes.

(Testimony of Jack Malley)

I am familiar with the clubs that are marketed by the Wilson-Western Sporting Goods Company, defendant in this case. I (200) recognize the club, Plaintiff's Exhibit No. 3. That is manufactured by the Wilson Company, and known as the Ogg-Mented model. Being shown another club which has no designation, that is a Wilson construction, known as the Professional model.

Q And that has its rubber gasket or cushion in it, that model that you refer to?

MR. LYON: That is objected to as really not rebuttal. This is a matter of his case in chief, rather than rebuttal.

MR. GRAHAM: No. I want to ask the witness to testify about that in a minute.

MR. LYON: It is an attempt to bring this club into issue in this case, at the present time.

THE MASTER: It may be gone into at this time.

MR. LYON: I just want that understood, is all. (201)

As to the cause of the sting that you hear people refer to in playing golf, there is such a sting in a golf club, and always has been. As to whether that is evident at any particular time or manner of handling the club, my experience has been that your sting is in hitting a golf shot, with any club made; if it is properly hit there is no sting. If a shot is hit at the center of the ball or above the center of the ball, there has been a sting. In other words, if the golf club is used (202) correctly and the ball is hit fairly, as it should be hit, you don't have the sting; there is no sensation of a sting if the shot is hit correctly.

I have obtained clubs from the Wilson-Western Sporting Goods Company of the construction of Plaintiff's Exhibit No. 3. I have purchased clubs from the Wilson-

(Testimony of Jack Malley)

Western Sporting Goods (204) Company on representations made by that company that they had particular features. As to when any such representations were made and anybody present; I can't state a definite incident or a definite time; possibly a year ago. (205) I have tried these clubs, used them.

Q What would you say with respect to this rubber insert there, whether it had any effect on the feel or the sting or the action of the club?

MR. LYON: Objected to as calling for a conclusion and on the ground there is no foundation laid for such an opinion.

THE MASTER: He may give his opinion. Overruled.

MR. LYON: Exception.

A As to my personal opinion, with the experience I have had, the old construction, which is steel against steel, you would naturally have much more of a shock than you would with a cushion top of any kind in the hosel or at the top of the hosel.

CROSS EXAMINATION

BY MR. LYON

I have not taken one of these Wilson-Western clubs and tried it, with that piece of rubber that I have referred to out of this, and strike a ball. As to whether I ever struck a ball with one of these Wilson-Western clubs, I played a set of them two years. As to whether I knew at that time whether I hit a ball incorrectly or not, so it would give the sting I refer to, I miss a good many, yes, and I got the sting. (207)

(Whereupon an adjournment was taken to Friday, June 1, 1934, at 10:00 o'clock A. M.)

(Testimony of William A. Doble)

Los Angeles, California, Friday, June 1, 1934, 10:00 A. M.

(Parties present as before.)

WILLIAM A. DOBLE (208)

(Recalled)

REDIRECT EXAMINATION

BY MR. LYON

Q Mr. Doble, in Plaintiff's Exhibit 1 is there disclosed a rubber cushion or washer member?

A No.

Q In Plaintiff's Exhibit 1 it is true, is it not, that the reference to the minimizing of the shock is described as a feature of the slotted construction?

A Yes.

Q In Plaintiff's Exhibit 2, Mr. Doble, is there any mention of the word "shock"?

A I don't find any.

Q. It is true, is it not, that in Plaintiff's Exhibit 2 the only function stated for the rubber sleeve 5 is one of excluding foreign matter or dirt from within the chamber formed by the beveling outwardly of the inner wall of the upper end of the hosel?

A Yes, and to prevent dirt and dust working into the hosel, which would interfere with the functioning of the slotted portion of the shaft, and within the chamber of the hosel. (209)

Q In Plaintiff's Exhibit 2 it is true, is it not, Mr. Doble, that there is no function attributed to the rubber sleeve 5 of any cushioning function?

A That is correct.

(Testimony of William A. Doble)

Q As disclosed in the Barnhart patent, Plaintiff's Exhibit 2, and as disclosed in the Mattern patent, Defendant's Exhibit J-11, what difference, if any, is there between the sleeve 5 of the Barnhart patent and the vulcanized rubber sleeve as called for in the Mattern patent, Defendant's Exhibit J-11?

A They are the same thing, substantially.

Q In the Heller patent, Defendant's Exhibit J-7, does the rubber sleeve 7 impart any cushioning effect between the club head and the shaft?

A Very definitely so, yes.

Q In plaintiff's Exhibit 1, is the shaft 3 in wall to wall contact with the inner wall of the hosel of the club head?

A No, only at the extreme inner end of the shaft, where it is brazed in.

Q In Plaintiff's Exhibit 2, is the shaft 3 in metal to metal contact with the inner wall of the hosel?

A No, there again there is clearance between the shaft and the bore of the hosel.

Q In Figure 5 of Plaintiff's Exhibit 2 is that clearance provided for?

A The bore of the hosel is larger than the diameter (210) of the shaft, so as to permit working clearance between them, so that relative rotational movement can take place between the shaft and the hosel, excepting at the extreme end where it is secured to the head.

MR. LEWIS E. LYON: That is all. You may cross-examine.

(Testimony of William A. Doble)

RE CROSS EXAMINATION

BY MR. GRAHAM

Q Calling your attention to the first Barnhart patent, Exhibit 1, and for the present the Figure 4 and the description on page 2 of the patent, beginning at line 68, the fastening of the shaft to the club is described as by the lead or other metal that is poured around the reduced portion of the shaft, is that not correct?

A Yes.

Q So that, as illustrated in Figure 4, and bearing in connection therewith, the description beginning with line 68, page 2, and continuing to line 90, a club can either be made with a simple fastening of the lead around the reduced portion of the shaft, or, in addition thereto, metal may be poured in around the bottom of the shaft; is that correct?

A I don't think so, because through the pouring in of lead, an inert metal, into the socket with the contraction at (211) 3 b in the shaft, 3, might retain the shaft from pulling out of the head, it would not prevent the head from rotating on the shaft unless it was brazed at the extreme end of the shaft as shown at 4 in Figure 4.

Q Isn't lead a fixing material for holding parts together?

A Not by itself; only with itself, like when you burn lead together or make a wiped joint; but it is not used as a brazing material, where you want to unite two pieces rigidly together.

Q Well, lead is used as soldering material, isn't it, for joining pieces of metal together?

(Testimony of William A. Doble)

A Straight lead is used for joining lead to lead, in burning or wiping joints, but solder contains other elements, such as tin and such other elements.

Q I call your attention to the part of the specification I referred to, where it says, "lead or other deadening material", and further down it says, at 76, that lead or other material may readily retain the shaft in position. Isn't that broad enough to include a metal that could be put in there that would retain the shaft in position?

A It might be broad enough, but there is no teaching of such material for that purpose, and if you take any of the brazing materials which you are reading in there, they would be so hot as to draw the temper out of the shaft and ruin it. Lead is not used for that purpose. (212)

Q But other material is?

A It depends on how you say that, other material. There is no disclosure teaching what that other material may be. In the light of the present art, I might say so, but that doesn't teach anything; it is too indefinite.

Q With your vast knowledge of mechanics to draw on, do you mean to say that that teaching in the patent wouldn't permit you to use some metal that would perform the function described?

A It would teach me to—

Q Please answer the question yes or no.

A I can't answer that yes or no. It would teach me that lead would be useless for the purpose, and that I would have to investigate and find some other metal that could be used, if I could find one that would be successful.

Q Do I understand, with respect to the same patent, that you state that in Figure 1 there is no metal to metal

(Testimony of William A. Doble)

contact except at the extreme lower end of the shaft or hosel?

A Yes, because in mechanics a metal to metal contact means a tight contact, like a driving fit or a shrink fit. This has a working clearance.

Q On what do you base that statement?

A From the specifications and also from the fact that the head rotates at the point 2-b with respect to the shaft 3, (213) and therefore there must be a working clearance; and again from the fact that as that torsion takes place in the slotted portion of the shaft it tends to shorten the shaft, and would draw the tapered shaft within the portion 2-b, and therefore it must be large enough so that when it is drawn in it will not be a tight fit, which would prevent the functioning of the club as disclosed in the specifications.

Q It would still be a metal to metal contact, wouldn't it?

A. Not in mechanics. We don't consider it a metal to metal contact unless it is a pressure contact. There is a working clearance there, and there may be other material in between the two metals.

Q Solder is a well known shop material, isn't it?

A Yes.

Q Calling your attention to the second Barnhart patent, Plaintiff's Exhibit 2, and with respect to the gasket or washer, do I understand your testimony that the only reference to that is to exclude dirt and dust and grit from the inside?

A As a flexible sealing material, yes, due to the flexibility of the relative movement of the parts.

(Testimony of William A. Doble)

Q Well then, it has another function, has it not, it permits flexibility and movement of the parts?

A Well, I think that is all covered in the one, when (214) you say flexible sealing member.

Q Calling your attention to page 2, line 112: "Thus, the shaft is permitted to flex, twist and expand relative to the ferrule," consequently it does have another function than merely a sealing member, does it not?

A I think that is all covered by the one term "flexible sealing material;" it goes on there and says, "And still excludes dirt, dust and grit therefrom." That is the purpose of it.

Q. Then, it is not merely a sealing member, a sealing material, but it is a flexible sealing material that permits the shaft to have the function there described, is that correct?

A Yes, it is a flexible sealing material, and that covers all that you have asked about. It is the same as it is in the prior art.

MR. GRAHAM: That is all. I move to strike that latter part of the answer.

THE MASTER: All right, that may go out.

MR. GRAHAM: That is all.

MR. LEWIS E. LYON: There is one other matter, if the court please, and it may necessitate recalling Mr. Doble for the purpose of describing this Exhibit 3.

REDIRECT EXAMINATION

Q BY MR. LEWIS E. LYON: Mr. Doble, will you take (215) Defendant's Exhibit H and Plaintiff's Exhibit 3, and holding with your left hand the head of the club, and your right hand the shaft, twist the shaft and state

(Testimony of George E. Barnhart)

with reference to those two exhibits what there is with reference to those exhibits which permits of that motion there?

MR. GRAHAM: Objected to as not sur-rebuttal.

THE MASTER: Well, to twist that, with a piece cut out, doesn't mean anything.

MR. LEWIS E. LYON: That is all, then.

THE MASTER: If that were not cut out, you could not get a perceptible twist with your hand, very well.

MR. LEWIS B. LYON: Plaintiff rests.

THE MASTER: With half of this off, it weakens it so that you could twist it materially.

MR. GRAHAM: Mr. Barnhart, will you take the stand?

GEORGE E. BARNHART (216)

called as a witness on behalf of the plaintiff in rebuttal, testified as follows:

DIRECT EXAMINATION

BY MR. GRAHAM

I have heard the testimony of the defendant's witness, Patterson, relating to some tests that he made. I believe he stated they were made with and without the gasket in the club. I have conducted tests of that kind. I have played with various types of construction, with clubs having a construction of solid metal head, with a joint such as shown in the Defendant's Exhibit B, and with clubs such as Plaintiff's Exhibit 3.

(Testimony of George E. Barnhart)

Q Please state what you found or what you observed in using those two different clubs that you have referred to.

(Objected to on the ground that no proper foundation has been laid. Objection overruled. Exception.) (217)

There was considerable shock using the defendant's Exhibit B, and there was considerable breakage. I noticed in the golf shops that there was considerable breakage in the early clubs about the hosel or about the joint between the shaft and the hosel. On the clubs having the joint reinforced, for bending over the shaft point, I found that there was less breakage, and in my playing I had less shock from hitting the ball. That is in comparison with the club having an all-metal contact of the shaft with the hosel throughout the length of the hosel, and the club like Plaintiff's Exhibit 3; however, the problem may be solved by taking the bending stresses off of the sharp point by letting the shaft flex over a curved reinforcement or in any way supporting it, then the stresses are brought in gradually to take the load off of the hosel.

MR. LEWIS E. LYON: I move to strike the statement with reference to solving the problem, as not responsive to any question.

THE MASTER: I will take it as his opinion.

I would not consider it a fair test in comparing the clubs or the action of the clubs, to take a club like Exhibit 3 and to strike a ball with the rubber gasket in the club, and then simply remove the rubber gasket.

I have secured a shaft to a hosel by using hot brass, as referred to in my patent. As to how I did that, I used an oxyacetylene flame and run the molten brass into

(Testimony of George E. Barnhart)

the hole at the small end. I couldn't notice any effect on the temper of the shaft.

With reference to this club that has a head marked "101 Professional Special," which has been testified to in the testimony of Mr. Patterson and Mr. Doble, that is my property.

Q Can you state the reason for the apparent burnt condition of the metal above the hosel and the gasket that was—

A That was—

MR. LEWIS E. LYON: Just a moment. That is objected to as not rebuttal. That is a matter that was not gone into.

MR. GRAHAM: I am just doing it to identify the club. It was (219) testified to by the other witnesses, and I am simply offering the club in evidence, and having the witness explain the apparent burnt condition of the parts of the club.

MR. LEWIS E. LYON: I don't know that it is rebuttal.

THE MASTER: I don't know that it would be of any value.

MR. LEWIS E. LYON: Because it was not identified at the time.

MR. GRAHAM: It was identified as the same construction as that shown in the defendant's catalog.

MR. LEWIS E. LYON: There was no identification of it.

THE MASTER: There are three or four clubs here.

MR. GRAHAM: It was referred to by the number of the club.

(Testimony of George E. Barnhart)

THE MASTER: Well, if it was sufficiently identified at the time you may offer it in evidence.

Q BY MR. GRAHAM: Do you know the make of club that that is?

(Objected to as not rebuttal. Objection overruled. Exception.)

It is a Wilson, I think.

(Golf club marked on the head "Professional Special 101" offered in evidence as Plaintiff's Exhibit No. 12.)
(220)

MR. LEWIS E. LYON: Objected to on the ground that it is not properly proven or identified, and it is immaterial, and not within the issues of this case.

THE MASTER: It will be received as illustrating the testimony of the previous witnesses.

MR. GRAHAM: It has been identified as like the club of the Wilson-Western catalog of 1930, and the defendant's witnesses testified that they made clubs like the catalog.

MR. LEWIS E. LYON: Exception.

THE MASTER: Well, it can't be offered as an infringing structure.

MR. GRAHAM: It has already, even in the bill of particulars, been pointed out as an infringing structure.

MR. LEWIS E. LYON: It wasn't offered on your case in chief.

MR. GRAHAM: Not the particular club, but the structure was.

MR. LEWIS E. LYON: No, it wasn't.

MR. GRAHAM: That is all.

MR. LEWIS E. LYON: There was no evidence offered of that club.

(Testimony of George E. Barnhart)

MR. GRAHAM: Do you want to ask him anything?

MR. LEWIS E. LYON: Yes.

THE MASTER: Yes. Two or three witnesses testified as to this club, but I don't know whether it was identified at that time sufficiently. We can tell from reading the testimony whether they were referring to this club or to some other. But, as illustrating this testimony, it will be received. It will be Plaintiff's Exhibit No. 12.

CROSS EXAMINATION

BY MR. LYON (221)

As to whether I have testified that I have played golf with clubs similar to Plaintiff's Exhibit 3, in so far as the hosel connection. There was a different type of shaft at the time I was particularly interested in solving this problem. The Bristol Company was putting out a seamed shaft. With that seamed shaft there was a considerable amount of breakage. As to whether the clubs that I have played with, like Plaintiff's Exhibit 3, did not have that seamed shaft, I do not recall having played with any of the plaintiff's seamed shaft construction. As to whether I happen to know of my own knowledge, or made any tests to determine what the structural steel characteristics were of the shaft which I played with in a club like Plaintiff's Exhibit 3, other than the fact that it was a steel seamed shaft, I have had metallurgical tests by the Osborn Testing Laboratories of the (222) material of the seamed shaft and the material of the Union Hardware shaft and the material of the Fork and Hoe shaft. Those metallurgical tests showed that the steel structure of the three shafts was different. With steel shafts of different construction you would expect different breaking character-

(Testimony of George E. Barnhart)

istics, particularly in regard to the type of structure, the way the steel is heat treated, the particular kind of steel, and the working of the steel during the manufacture. Those three shafts have peculiar characteristics. This Union Hardware shaft I consider as being one of the worst formations of working, that of carbonizing the steel after it is worked; in other words, it is swedge by a swedging operation, and then carbonized later, making a brittle structure. As to whether it is not a fact that the melting temperature of brass is approximately 1600 degrees Fahrenheit, I do not know the exact temperature. As to whether it is around there, I wouldn't be qualified to testify on that definitely.

THE MASTER: It is a little lower than that, isn't it? (223)

MR. DOBLE: 1650.

As to whether I would say it was around that, I wouldn't guarantee it. I know that lead is the proper drawing temperature—the melting point of lead—for making a tough steel. I wouldn't be able to give testimony on whether the drawing temperature of steel, the point at which you begin to draw the temper on the steel, is approximately 400 degrees Fahrenheit.

THE MASTER: Let us not get into that. It depends on the steel entirely.

MR. LEWIS E. LYON: That is what I meant. That is the beginning of it.

(Testimony of George E. Barnhart)

THE MASTER: Oh, some steels, their temper increases from that temperature on. Isn't that a fact, Mr. Doble?

MR. DOBLE: Yes, but those are special steels, are they not. In the steel that is used for this purpose the temper begins to run at about 380 degrees Fahrenheit, and at 700 degrees Fahrenheit or 750 we get what we call a spring tempered steel, that is, a blue tempered steel, and above that the temper dies right out.

Witness Barnhart continuing.

As to whether I poured hot brass into a structure like that illustrated in my patent, using an oxyacetylene flame, and observed no effect on the temper of the shaft, and as to whether I took the shaft out and made any determination as to whether there was any effect of the temperature on the temper of that shaft, I believe that the test that concerned me was whether the club would stand up in play. I did not find considerable breakage in the shafts of these clubs in that particular regard.

Q Not because of pouring the brass over them?

A The particular trouble that brass would give would be to soften the metal and give better characteristics to those spiral grooves.

TESTIMONY CLOSED.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA CENTRAL
DIVISION

GEORGE E. BARNHART,	-		
	Plaintiff,	-	IN EQUITY
vs.		-	No. 26-M
WILSON-WESTERN SPORTING	-		
GOODS CO., a corporation,	-		
	Defendant.	-	

STIPULATION RE STATEMENT OF EVIDENCE
IN NARRATIVE FORM.

IT IS HEREBY STIPULATED by and between the parties to the above entitled-cause that the foregoing is a true and correct statement of the evidence in narrative form.

Dated, Los Angeles, Cal. February 27, 1935.

Frank L. A. Graham

Attorney for Plaintiff-Appellee & Cross-Appellant.

Lyon & Lyon

Lewis E. Lyon

Henry S. Richmond

Attorneys for Defendant-Appellant and Cross-Appellee.

The above stipulation is approved, and the Statement of Evidence as lodged herein is hereby settled and allowed.

Paul J. McCormick

United States District Judge.

[Endorsed]: Lodged Oct. 23, 1934. R. S. Zimmerman, Clerk By Edmund L. Smith, Deputy Clerk. Filed Mar. 1, 1935. R. S. Zimmerman Clerk By Edmund L. Smith, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

NOTICE OF LODGMENT OF NARRATIVE
STATEMENT OF TESTIMONY.

To GEORGE E. BARNHART, Plaintiff, AND

To FRANK L. A. GRAHAM, his Attorney:

PLEASE TAKE NOTICE that the defendant above named has on the 23rd day of October, 1934, lodged with the Clerk of the above entitled Court a condensed statement of the evidence taken in the above entitled cause, in accordance with Federal Equity Rule No. 75.

Lyon & Lyon

Lewis E. Lyon

Attorneys and Counsel for Defendant

RECEIVED copy of a condensed Statement of Evidence so lodged, this 23rd day of October, 1934.

Frank L. A. Graham

Attorney for Plaintiff

[Endorsed]: Filed Oct. 24, 1934. R. S. Zimmerman,
Clerk By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

REPORT OF SPECIAL MASTER.

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

The undersigned, DAVID B. HEAD, appointed special master by an order entered April 5, 1934, which directed him to take and hear the evidence offered, to make conclusions as to the facts and to recommend the judgment to be entered thereon, herewith submits his report:

The cause was set down for the taking of testimony. On May 29, 1934 the following appearances were made: for the plaintiff, Frank L. A. Graham, Esq., for the defendant, Lyon and Lyon by Lewis E. Lyon, Esq. The evidence offered by the parties was received, oral arguments heard and the cause was then submitted.

The action is in equity for the alleged infringement of Letters Patent No. 1,639,547 and No. 1,639,548 Both patents relate to golf clubs and particularly to the attachment of the head of a club to a steel shaft.

Wooden shafts have been in long use in golf clubs. One objection to steel shafts is that they do not possess the same degree of flexibility and resiliency as wooden shafts. The usual point of breakage in a steel shaft is at the juncture of shaft and club head. In the testimony the witnesses frequently used the term "hosel" to designate the socket portion of the club head.

The structures described in the patents are simple in form. Figure 1 of the first patent, No. 1,639,547, shows

a club head to which an elongated ferrule, 2, is attached to form a socket for the shaft. The dotted lines indicate the length of the usual socket. The ferrule is cut out in the lower part to a size greater than that of the shaft and flared at its outer end to an inside diameter greater than that of the shaft. Between the cut out and flared portions of the ferrule is a restriction 2^b. The shaft 3 is provided with longitudinal slots 3^a. It is fixed in place by brazing, welding or soldering at the lower end.

The objects of the invention are stated in the patent at considerable length. The principal object is to provide a shaft which has greater torsional and longitudinal flexibility. When the club is used the weakened section inside the socket permits the shaft to bend longitudinally bearing against the restricted portion 2^b. It also is permitted to twist axially within the socket at the weakened section. The flared portion of the socket is designed to provide a wide area over which the shaft may bend as distinguished from the single point of bending such as found in the usual shaft and hosel. The patentee states as one object of the invention:

“second, to provide a golf club having a steel shaft in which the shaft is secured at its extreme end to the head of the club and reinforced intermediate its ends near its secured end in the form of a pivot means adapted to take the initial bending moment and considerably relieve the danger of breaking of the shaft from the head immediately at the secured portion”.

The second patent No. 1,639,548 describes a golf club similar to that of the first patent. The socket is formed in the same manner. The shaft differs in that the slots are cut in a spiral form. This construction offers less

resistance to torsional twisting when used to strike a normal blow.

Figure 6 of the second patent illustrates a construction which includes a rubber cap or sleeve, 5, which is provided for the purpose of excluding dirt from the socket while still permitting the shaft to move relative to the socket. The socket is not flared in Figure 6 but it appears to be of the alternative form shown in Figure 1. When the rubber sleeve is used with the socket of Figures 3, 4 and 5 the patent states that it may be positioned within the end of the socket and around the shaft.

The second patent describes a form of construction in Figure 5 wherein the socket is flared but not undercut. Figure 4 of the first patent shows a construction wherein the socket is flared and the undercut portion solidly filled with lead for the purpose of deadening the shock of the blow. Neither of these constructions provide for longitudinal bending of the shaft below the restricted portion of the socket, although the flared upper end permits the shaft to bend above the restriction.

Claims 11, 12, 13 and 15 of the first patent, 1,639,547, are in issue. Claim 11 is the broadest. It reads.

"11. In a golf club, a head member provided with a socket and with a shaft, the latter being secured at its one end within the inner portion of the socket, the portion of the shaft near the outer end of said socket being freely movable within and relative to and about the outer end portion of said socket to prevent buckling of said shaft at the outer end of the socket.

Claim 13 includes as an element "A ferrule for reinforcing the shaft connection of a golf club to the head thereof, comprising a long sleeve, - - -".

Claim 15 includes “- - - a head member provided with a long ferrule - - -”.

Claim 10 of the second patent, No. 1,639,548, is in issue. It reads:

“10. In a golf club, a head having a socket, a shaft secured at one end within said socket, the portion of the shaft within the outer end of the socket being movable relative to the latter, and a flexible sealing member positioned at the joint between the outer end portion of said socket and said shaft.”

PRIOR ART

The prior art patents are designated as exhibits J-1 to J-13, inclusive. Treadway, Exhibit J-6, Maas, Exhibit J-9, Reach, Exhibit J-10, Mattern, Exhibit J-11, and the British patent, Exhibit J-13, were considered by the Patent Office during the pendency of the applications for the patents in suit.

Treadway, Exhibit J-6, shows a golf club with slots cut in the portion of the shaft which fits in the hosel. The hosel is of the conventional type with the socket closely fitting the shaft at all points. In the socket there is no flared portion above a restricted section. The claims in issue are directed solely to a flared construction. Treadway does not anticipate this feature of Barnhart's disclosure.

Maas, Exhibit J-9, Reach, Exhibit J-10, Matters, Exhibit J-11, Sanders, Exhibit J-13, likewise disclose sockets which fit the shaft tightly at all points. Reach shows a fiberloid sleeve, 5, fitted around the junction of the shaft and hosel which functions to exclude dirt from the socket. Sanders in Figure 7 shows a wrapping which serves the same purpose. Mattern used a wire wrapping at the same

point which may be covered with solder. In none of these constructions is there relative movement between the hosel and the shaft or is any provision made for positioning a sealing means between the hosel and the shaft.

It appears that the claims in issue were properly allowed over the prior art cited by the examiner.

The other patents in evidence are pleaded in answer but were not considered by the Patent Office.

Robertson, Exhibit J-1, concerns a fishing rod. The handle is cut out to permit longitudinal movement of the rod within the cut out portion. The rubber bushing, g, provides a fulcrum point and excludes dirt from the bore in the handle. The outer portion of the handle is not flared and the bushing forms the joint between the handle and rod. These features distinguish this structure from those of the patents in suit.

The cushioned hammer head of Isham, Exhibit J-4, and the pivoted broom handle of Kavanaugh, Exhibit J-2, do not appear to be relevant.

Lard, Exhibit J-3, is the closest reference to the combination of claim 10 of the second patent. This patent is concerned with the attaching of wood shafts to wood club heads. A tube, 4, is inserted in the socket of the club head. At the neck of the club head is a small projection, 3. A washer of leather or other suitable material, 14, is positioned around the tube 4 and against the club head. Other washers may be placed above the first washer. The patent states that the washers lessen the tendency of the shaft to break at that point and that they serve to exclude moisture from the socket. At the point where the washers are positioned there is no relative movement be-

tween the socket and the shaft. The socket is not flared above a restricted section.

The patents to Lagerblade, Exhibit J-5, Heller, Exhibits J-7 and J-8, and Pryde, Exhibit J-12, disclose the use of some resilient material for the purpose of reducing shock. Wrapping at the juncture of shaft and hosel is shown by Pryde and Heller. None shows the use of a flared socket.

VALIDITY

As before noted the claims of the first patent in issue are limited to the flared end portion of the socket which functions to lessen the strain on the shaft at the point of juncture with the hosel. Other claims of the patent are directed to combinations which include the slotted feature of the shaft. The claim of the second patent in issue is directed to the combination of a flexible bushing and the flared socket without regard to the slotted shaft.

At first glance it would appear that the flaring of the outer portion of the socket would be an obvious way in which to distribute the strain at the point of juncture of the shaft and hosel. However an examination of the prior art patents does not disclose any suggestion of such a construction. This tends to strengthen the presumption of invention.

It is concluded that Claims 11, 12, 13 and 15 of the first patent No. 1,639,547 are valid.

Claims 13 and 15 specify a long ferrule or a long sleeve. The patent describes a ferrule longer than that

of the conventional hosel. (See Figure 1 and descriptive matter beginning on Page 1, line 96). Obviously these claims are limited to a structure having an elongated ferrule or sleeve.

Claim 10 of the second patent was allowed without comment by the Patent Office. Other claims drawn to the construction of Figure 6 were rejected. The patent to Lard, Exhibit J-3, was not cited. The function of the washers in Lard and the bushing of the patent is the same, i. e., to exclude dirt from the socket. However the relative movement between the shaft and socket in the structure of the patent is not found in the Lard club. The patentee's problem was to provide a sealing means which was sufficiently flexible to permit this movement. The presumption of validity has not been rebutted and it is concluded that the claim is valid. It appears that the claim should be limited to the use of a sealing member in a structure where the shaft and socket are relatively moveable in the manner disclosed by the patent.

Defendant contends that the plaintiff has never made use of his patents and that it is to be inferred from this that the disclosures lack utility. *Henry vs. City of Los Angeles* 255 F. 769. The defendants adoption of the features of the patents here in issue is a use which tends to strengthen the presumptions of novelty and utility. *Hallock vs. Davison* 107 F. 482. *Kelsey Heating Co. vs. James Spear etc. Co.* 155 F. 976.

INFRINGEMENT

Plaintiff in his bill of particulars charges infringement by the sale of certain clubs illustrated in defendant's catalogues for 1930, 1931, 1932 and 1933.

On page 4 of the 1930 catalogue, Exhibit 8-B, is an illustration showing the construction described by the defendant as "the no-shock" hosel. Exhibit 12, a club with a cut away portion, is similar to the club illustrated in the catalogue. The shaft is closely fitted in the lower part of the socket and held in place by a pin at about the middle part of the socket. The socket is flared outward at the upper end. This permits the shaft to flex above the closely fitted portion without bending over a sharp edge. A rubber bushing is fitted around the shaft, a portion of the bushing extending down between the shaft and hosel.

The catalogue claims that this construction reduces the amount of the shock of impact that is transmitted to the hands of the player. Herein evidence was offered to the effect that this was not true and that it was merely "sales talk". This is probably the fact, but inasmuch as neither patent claims such a function, it is immaterial.

Defendant further urges that it avoids infringement for the reason that the shaft is secured within the socket at a point about 2 inches from the end of the shaft, whereas the claims in issue specify that the shaft is secured at one end in the socket. In the club illustrated in the 1930 catalogue the shaft is pinned to the club head below the flared part of the socket at a point which is substan-

tially at the end of the club. Figure 4 of the drawings of the first patent shows a construction wherein the shaft is attached solidly within the socket from the restricted portion to the extreme end of the shaft. The use of a pin which was old in the art, is equivalent to the means of affixing the shaft which are specified in the patents.

Defendant's contention that the patents are limited to a structure wherein the elements of the claims in issue are used in combination with the undercut socket and slotted shaft does not appear to be well taken. The Patent Office allowed claims including all of the elements described as well as the claims in issue which do not include the undercut socket and the slotted shaft. Again referring to Figure 4 of the first patent, a construction is found wherein the undercut socket and slotted shaft are not used. Claims drawn to subcombinations of elements are good provided that invention is present in the combination. The claims, being valid, can not be limited by reading additional elements into them.

Claims 13 and 15 of the first patent are limited by the wording of the claims to a structure with a socket longer than the conventional type. The club illustrated in the 1930 catalogue and by Exhibit 12 has the conventional type of hosel. It is concluded that claims 13 and 15 are not infringed by this club. Claims 11 and 12 are not so limited and it is concluded that these claims are infringed. Claim 10 of the second patent reads directly on this structure and it is concluded that this claim is infringed.

The catalogues of 1931, 1932 and 1933 do not clearly show the features of construction with which this case is concerned. Exhibit 3, which the plaintiff offers as illustrating an alleged infringing structure differs from the club Exhibit 12 and the illustration in the 1930 catalogue. Instead of a gradually flaring taper at the upper end of the socket, this club has a portion cut away leaving a well defined shoulder below which the shaft is tightly fitted. There is little or no distribution of strain as the shaft is free to bend abruptly at this point. It is the function of the combination of the patent to avoid this action. It is concluded that none of the claims of the first patent in issue are infringed by clubs of the type of Exhibit 3. A rubber bushing is interposed between the shaft and the cut out portion of the socket. It is concluded that claim 10 of the second patent is not infringed in view of the previous finding that Claim 10 is limited to the use of a rubber bushing in combination with the particular hosel construction described in the patent.

CONCLUSIONS

1. That title to Letters Patent No. 1,639,547 and No. 1,639,548 is vested in the plaintiff.
2. That said Letters Patent are good and valid in law.
3. That the defendant by selling and offering for sale golf clubs embodying the invention of claims 11 and 12 of Letters Patent No. 1,639,547 and claim 10 of Letters

Patent No. 1,639,548 have infringed the said Letters Patent.

4. That the defendant has not infringed claims 13 and 15 of Letters Patent No. 1,639,547.

5. That the defendants have not infringed the Letters Patent in suit by the selling and offering for sale of golf clubs of the construction shown in Exhibit 3.

RECOMMENDATION

That a decree be entered in conformity with this report and that an injunction issue against further infringing acts and that an accounting of profits and damages be had.

A draft of this report was submitted to counsel. Each party excepted to unfavorable findings and conclusions. All exceptions are disallowed. Plaintiff contends in his exceptions that the rubber bushing in Exhibit 3 is equivalent to the tapered hosel of the first patent. While both may function to reduce strain at this point, they do not do so in the same manner. There is no equivalency in the sense the word is used in patent law.

Returned herewith is the file in the case together with the exhibits, transcript of testimony and other papers filed in connection with the proceeding on reference.

Respectfully submitted,

David B. Head

[Endorsed]: Filed Aug. 10, 1934 R. S. Zimmerman,
Clerk By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

DEFENDANT'S EXCEPTIONS TO THE REPORT
OF THE SPECIAL MASTER

COMES now defendant, WILSON-WESTERN SPORTING GOODS COMPANY, a corporation, and pursuant to the provisions of Equity Rule 63, makes the following exceptions to the Report of the Special Master filed herein August 10, 1934.

1. Defendant excepts to the finding of the Special Master that Letters Patent No. 1,639,547 are good and valid in law.

2. Defendant excepts to the finding of the Special Master that Letters Patent No. 1,639,548 are good and valid in law.

3. Defendant excepts to the holding of the Special Master that defendant has sold, or offered for sale, clubs like that illustrated on page 4 of the 1930 Catalogue, Plaintiff's Exhibit 8-B.

4. Defendant excepts to the holding of the Special Master that defendant has sold, or offered for sale, golf clubs embodying the invention of claims 11 and 12 of Letters Patent No. 1,639,547.

5. Defendant excepts to the holding of the Special Master that defendant has sold, or offered for sale, golf clubs embodying the invention of claim 10 of Letters Patent No. 1,639,548.

6. Defendant excepts to the conclusion of the Special Master that defendant has infringed claim 11 or claim 12 of Letters Patent No. 1,639,547.

7. Defendant excepts to the conclusion of the Special Master that defendant has infringed claim 10 of Letters Patent No. 1,639,548.

WILSON-WESTERN SPORTING GOODS
COMPANY

Defendant

By Lyon & Lyon

Lewis E Lyon

Its Attorneys and Solicitors

[Endorsed]: Filed Aug. 15, 1934. R. S. Zimmerman,
Clerk By L. Wayne Thomas, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

PLAINTIFFS EXCEPTIONS
To
MASTER'S FINAL REPORT.

NOW COMES Plaintiff and files his Exceptions to the Special Master's Final Report in the above entitled cause, pursuant to the provisions of the Equity Rules.

EXCEPTION NO. 1.

The Master erred in not finding claim 10 of patent No. 1,639,548 infringed by the club shown in Plaintiff's Exhibit 3.

Dated at Los Angeles, California this 28th day of August 1934.

Frank L A Graham
Attorney for Plaintiff.

[Endorsed]: Filed Aug 29, 1934. R. S. Zimmerman,
Clerk By L. Wayne Thomas, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

STIPULATION ADOPTING MASTER'S REPORT
as
FINDINGS OF FACT AND CONCLUSIONS OF
LAW.

It is stipulated and agreed by and between the parties to the above entitled cause through their respective attorneys that the Final Report of the Special Master filed herein be and the same is hereby adopted as Findings of Fact and Conclusions of Law in conformance with the requirements of the Equity Rules.

Dated at Los Angeles, California, this 21st day of September, 1934.

Frank L A Graham
Attorney for Plaintiff

Lyon & Lyon
Lewis E Lyon
Attorneys for Defendant

IT IS SO ORDERED.

Paul J. McCormick
Judge.

[Endorsed]: Filed Sep. 24, 1934 R. S. Zimmerman
Clerk By B. B. Hansen Deputy Clerk.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

—o0o—

GEORGE E. BARNHART,)	
	(
Plaintiff,)	
	(	IN EQUITY
vs.)	
	(	No. 26-M.
WILSON-WESTERN SPORTING)	
GOODS CO., a corporation,	(
)	
Defendant.	(

—o0o—

INTERLOCUTORY DECREE

THIS CAUSE having come on regularly to be heard upon exceptions to the Master's Report and upon the pleadings and proofs filed and produced on behalf of both parties, and the Court having considered the same and argument by both parties.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That plaintiff GEORGE E. BARNHART is the rightful owner of United States Letters Patent No. 1,639,547 granted on the 16th day of August, 1927, en-

title "GOLF CLUBS," and that said Letters Patent No. 1,639,547 are good and valid in law, particularly as to claims 11 and 12 thereof.

2. That plaintiff GEORGE E. BARNHART is the rightful owner of United States Letters Patent No. 1,639,548 granted on the 16th day of August, 1927, entitled "GOLF CLUB," and that said Letters Patent No. 1,639,548 are good and valid in law, particularly as to claim 10 thereof.

3. That subsequent to the granting of the said Letters Patent No. 1,639,547 and No. 1,639,548 and within six (6) years prior to the filing of the Bill of Complaint herein, within the Southern District of California, Central Division, the defendant WILSON-WESTERN SPORTING GOODS CO., without the consent of the plaintiff, has infringed upon said Letters Patent No. 1,639,547 and particularly claims 11 and 12 thereof, and has infringed upon said Letters Patent No. 1,639,548 and particularly claim 10 thereof, by selling and offering for sale golf clubs constructed as illustrated on page 4 of defendant's 1930 catalogue, Exhibit 8-B and the club Exhibit 12, embodying the invention set forth in claims 11 and 12 of patent No. 1,639,547 and claim 10 of patent No. 1,639,548.

4. That defendant's golf clubs constructed as illustrated on page 4 of defendant's 1930 catalogue, Exhibit 8-B and the club Exhibit 12, do not infringe claims 13 and 15 of Letters Patent No. 1,639,547.

5. That the claims in issue of the Letters Patent in suit, to-wit, claims 11, 12, 13 and 15 of Letters Patent No. 1,639,547 and claim 10 of Letters Patent No. 1,639,548 are not infringed by defendant's golf clubs shown in Exhibit 3.

6. That plaintiff recover from the defendant the profits and gains which the defendant has derived or received, by reason of the aforesaid infringement of said Letters Patent No. 1,639,547 and No. 1,639,548, and plaintiff recover from said defendant any and all damages by plaintiff sustained by reason of the said infringement.

7. That this cause is hereby referred to DAVID B. HEAD, ESQ. as Special Master pro hac vice to ascertain, take, state and report an account of the said profits and gains, and to assess such damages and report thereon with all convenient speed; that the defendant, its officers, agents, servants, employees and attorneys are directed and required to attend before said Master from time to time as required and to produce before him such books, papers, vouchers and documents and to submit to oral examination as the Master may require.

8. That defendant WILSON-WESTERN SPORTING GOODS CO., its officers, agents, servants, employees and attorneys and those in active concert or participating with them, be and they are, and each of them is, hereby permanently enjoined and restrained from making or causing to be made, selling or causing to be sold and from using or causing to be used any golf club or golf clubs

embodying the inventions patented in any by said Letters Patent No. 1,639,547 particularly claims 11 and 12 thereof or embodying the invention patented in any by said Letters Patent No. 1,639,548 and particularly claim 10 thereof, and from infringing upon and from contributing to the infringement of the said Letters Patent or either of them; and that a permanent Writ of Injunction issue out of and under the seal of this Court commanding and enjoining said defendant, its officers, agents, servants, employees and attorneys and those in active concert or participating with them as aforesaid.

Dated this 24th day of September 1934.

Paul J. McCormick
United States District Judge.

APPROVED AS TO FORM:

Lyon & Lyon
Lewis E Lyon
Attorneys for Defendant.

Decree entered and recorded Sep. 24, 1934. R. S. Zimmerman, Clerk By B. B. Hansen, Deputy Clerk.

[Endorsed]: Filed Sep. 24, 1934 R. S. Zimmerman, Clerk By B. B. Hansen Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 CENTRAL DIVISION

—0—

GEORGE E. BARNHART)	
)	
Plaintiff)	
	)	IN EQUITY
vs.)	
	)	NO. 26-M
WILSON-WESTERN SPORTING)	
GOODS CO., a corporation)	
)	
Defendant)	

PETITION FOR APPEAL.

TO THE HONORABLE PAUL J. McCORMICK,
 United States District Judge:

The above named defendant, feeling aggrieved by the Decree rendered and entered in the above entitled cause on the 24th day of September, 1934, DOES HEREBY APPEAL from said Decree to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons set forth in the Assignment of Errors filed herewith, AND PRAYS that the appeal be allowed, and that citation be issued as provided by law; AND THAT a transcript of the record, proceedings, papers and documents upon which said Decree was based, duly authenticated,

be sent to the United States Circuit Court of Appeals for the Ninth Circuit under the rules of such court in such cases made and provided;

AND YOUR PETITIONER FURTHER PRAYS that the proper order relating to security required by it be made.

DATED this 23rd day of October, 1934.

WILSON-WESTERN SPORTINGS GOODS
CO. a corporation

Defendant

By Lyon & Lyon

Solicitors for Defendant.

Lyon & Lyon

Lewis E. Lyon

Attorneys and Counsel for Defendant.

[Endorsed]: Filed Oct 23 1934 R. S. Zimmerman,
Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ASSIGNMENT OF ERRORS.

NOW COMES the above named defendant, WILSON-WESTERN SPORTING GOODS CO., a corporation, and files the following Assignment of Errors upon which it will rely upon the prosecution of the appeal in the above entitled cause from the Interlocutory Decree entered and recorded September 24th, 1934, by this Honorable Court:

THAT the United States District Court for the Central Division of the Southern District of California erred:

(1) In failing to decree that the Bill of Complaint be dismissed;

(2) In finding and decreeing that United States Letters Patent No. 1,639,547 granted on the 16th day of August, 1927, for "GOLF CLUB" are good and valid in law;

(3) In finding and decreeing that United States Letters Patent No. 1,639,548 granted on the 16th day of August, 1927, for "GOLF CLUB" are good and valid in law;

(4) In failing to find and decree that United States Letters Patent No. 1,639,547 granted to plaintiff on the 16th day of August, 1927, for "GOLF CLUB" are void and invalid in law, particularly as to Claims 11 and 12 thereof;

(5) In failing to find and decree that United States Letters Patent No. 1,639,548 granted to plaintiff on the 16th day of August, 1927, for "GOLF CLUB" are void and invalid in law, particularly as to Claim 10 thereof;

(6) In finding and decreeing that defendant infringed Claims 11 and 12 of United States Letters Patent No. 1,639,547;

(7) In finding and decreeing that defendant infringed Claim 10 of United States Letters Patent No. 1,639,548;

(8) In failing to find and decree that defendant did not infringe Claims 11 and 12 of United States Letters Patent No. 1,639,547;

(9) In failing to find and decree that defendant did not infringe Claim 10 of United States Letters Patent No. 1,639,548;

(10) In finding and decreeing that defendant has sold or offered for sale clubs like that illustrated on page 4 of the 1930 catalogue, Plaintiff's Exhibit 8-B;

(11) In failing to find and decree that defendant has not sold or offered for sale clubs like that illustrated on page 4 of the 1930 catalogue, Plaintiff's Exhibit 8-B;

(12) In finding and decreeing that defendant has sold or offered for sale clubs like Plaintiff's Exhibit 12;

(13) In failing to find and decree that defendant has not sold or offered for sale clubs like Plaintiff's Exhibit 12;

(14) In failing to find and decree that defendant was entitled to the relief prayed for in its answer.

WHEREFORE, the appellant prays that said decree be reversed and that said District Court of the Central Division for the Southern District of California be ordered to enter a decree reversing the decision appealed from and entering a decree in favor of defendant in this cause as prayed in Defendant's Answer to the Bill of Complaint.

WILSON-WESTERN SPORTING GOODS CO.
a corporation

By Lyon & Lyon
Solicitor for said Defendant.

Lyon & Lyon
Lewis E. Lyon
Solicitors and Of Counsel
for said Defendant.

[Endorsed]: Filed Oct 23 1934 R. S. Zimmerman,
Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ORDER ALLOWING APPEAL.

ON MOTION of Lewis E. Lyon, Esquire, one of the solicitors and counsel for the above named *plaintiff*.

IT IS HEREBY ORDERED that an Appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Decree heretofore filed and entered herein on the 24th day of September, 1934, MAY BE AND THE SAME IS HEREBY ALLOWED, and that a transcript of record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

IT IS FURTHER ORDERED that the bond on appeal be fixed in the sum of Two Hundred Fifty Dollars (\$250.00) to act as a bond for costs on appeal.

DATED this 23rd day of October, 1934.

Paul J. McCormick
United States District Judge

[Endorsed]: Filed Oct 23 1934 R. S. Zimmerman,
Clerk. By Edmund L. Smith Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

NOTICE OF APPEAL.

To GEORGE E. BARNHART, Plaintiff; And
To FRANK L. A. GRAHAM, Counsel for Plaintiff, Los
Angeles, California.

COMES NOW the WILSON-WESTERN SPORT-
ING GOODS CO., a corporation, above named defendant,
by its counsel, and gives notice to plaintiff that an appeal
is hereby taken to the United States Circuit Court of
Appeals for the Ninth Circuit from the Decree of this
Court entered herein on September 24th, 1934, insofar as
said decree is adverse to the defendant.

DATED this 23rd day of October, 1934.

WILSON-WESTERN SPORTING GOODS CO.,
a corporation

By Lyon & Lyon

Lewis E. Lyon

Its Attorneys.

[Endorsed]: Filed Oct 24, 1934 R. S. Zimmerman,
Clerk By L. Wayne Thomas, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:

THAT UNITED STATES FIDELITY & GUARANTY COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Maryland, and duly licensed to transact business in the State of California, IS HELD AND FIRMLY BOUND to George E. Barnhart, plaintiff in the above entitled suit, in the penal sum of Two Hundred Fifty and no/100 Dollars (\$250.00), to be paid to the said George E. Barnhart, his heirs, executors, administrators and assigns, for which payment well and truly to be made, the United States Fidelity & Guaranty Company binds itself, its successors and assigns firmly by these presents.

SEALED with the corporate seal and dated this 23rd day of October, 1934.

THE CONDITION OF THE ABOVE OBLIGATION is such that, WHEREAS, Wilson-Western Sportings Goods Co., a corporation, defendant in the above entitled suit, is about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree in the aforesaid suit made and entered on September 24th, 1934, insofar as it sustains the validity of the Letters Patent in suit and finds infringement by said defendant of said Letters Patent in suit; AND,

WHEREAS, an Order has been made and entered in said cause dated October, 1934, that the bond of de-

defendant on said appeal be fixed at the sum of Two Hundred Fifty and No/100 Dollars (\$250.00);

NOW, THEREFORE, the condition of the above bond is such that if said defendant, Wilson-Western Sporting Goods Co., shall prosecute its appeal to effect and answer all costs if it fails to make good its appeal, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the corporate name of said surety is hereunto affixed and attested by its duly authorized attorney-in-fact and agent at Los Angeles, California, this 23rd day of October, 1934.

UNITED STATES FIDELITY & GUARANTY CO.

[Seal]

By O. D. Brick

Attorney-in-fact

EXAMINED AND RECOMMENDED for approval as provided in Rule 28.

Henry S. Richmond

Attorney for Defendant.

I HEREBY APPROVE the foregoing bond and the surety thereon.

Paul J. McCormick

U. S. District Judge.

STATE OF CALIFORNIA }
 COUNTY OF Los Angeles } ss:

On this 23rd day of October in the year one thousand nine hundred and Thirty-four, before me, AGNES L. WHYTE, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared O. D. BRICK, known to me to be the duly authorized Attorney-in-fact of the UNITED STATES FIDELITY AND GUARANTY COMPANY, and the same person whose name is subscribed to the within instrument as the Attorney-in-Fact of said Company and the said O. D. BRICK duly acknowledged to me that he subscribed the name of the UNITED STATES FIDELITY AND GUARANTY COMPANY thereto as Surety and his own name as Attorney-in-fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]

Agnes L. Whyte

Notary Public in and for Los Angeles County, State of California.

My Commission Expires Feb. 26, 1937

[Endorsed]: Filed Oct 23, 1934 R. S. Zimmerman,
 Clerk By Edmund L. Smith, Deputy Clerk.

IN THE UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 CENTRAL DIVISION

* * *

GEORGE E. BARNHART)	
	(
	Plaintiff)
	(
vs.	)	IN EQUITY
	(	NO. 26-M
WILSON-WESTERN SPORTING)	
GOODS CO., a corporation	(
)	
	Defendant	(
)

* * *

PETITION FOR CROSS-APPEAL

TO THE HONORABLE PAUL J. McCORMICK,
 United States District Judge:

WILSON-WESTERN SPORTING GOODS CO.,
 Defendant in the above entitled cause having obtained an
 allowance of an Appeal from the Interlocutory Decree
 entered herein on the 24th, day of September, 1934.

The above named Plaintiff GEORGE E. BARNHART,
 feeling *agrieved* by the Decree rendered and entered in the
 above entitled cause on the 24th day of September, 1934,
 insofar as the said Decree decrees that the golf club,
 Plaintiff's Exhibit No. 3 does not infringe claim 10 of
 Letters Patent No. 1,639,548 in suit, DOES HEREBY

PETITION FOR A CROSS-APPEAL from said Decree to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons set forth in the Assignments of Error filed herewith, AND PRAYS that the cross-appeal be allowed, and that citation be issued as provided by law; AND THAT a transcript of the record, proceedings, papers and documents upon which said Decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit under the rules of such court in such cases made and provided;

AND YOUR PETITIONER FURTHER PRAYS that the proper order relating to security required by it be made.

DATED this 24th day of October, 1934.

GEORGE E. BARNHART

By Frank L. A. Graham

His Attorney

Frank L. A. Graham

Solicitor and of Counsel

[Endorsed]: Filed Oct 24, 1934 R. S. Zimmerman,
Clerk By L. Wayne Thomas, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ASSIGNMENTS OF ERROR

NOW COMES the above named plaintiff GEORGE E. BARNHART, and files the following Assignments of Error upon which he will rely upon the prosecution of his cross-appeal in the above entitled cause from the Interlocutory Decree entered and recorded September 24th, 1934, by this Honorable Court:

THAT the United States District Court for the Southern District of California, Central Division, erred:

(1) In finding and decreeing that claim 10 of United States Letters Patent No. 1,639,548 is not infringed by defendant's golf clubs as shown in Plaintiff's Exhibit No. 3.

(2) In failing to find and decree that defendant's golf clubs as shown in Plaintiff's Exhibit No. 3 infringe claim 10 of Letters Patent No. 1,639,548.

GEORGE E. BARNHART

By Frank L. A. Graham

Attorney for Plaintiff

[Endorsed]: Filed Oct 24, 1934 R. S. Zimmerman,
Clerk By L. Wayne Thomas, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ORDER ALLOWING CROSS-APPEAL

ON MOTION of FRANK L. A. GRAHAM, attorney for the above named plaintiff,

IT IS HEREBY ORDERED that a cross-appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the Decree heretofore filed and entered herein on the 24th day of September, 1934, BE AND THE SAME IS HEREBY ALLOWED.

IT IS FURTHER ORDERED, that the transcript of record heretofore ordered to be filed in connection with defendant's appeal is to be used for the consideration of this cross-appeal, the plaintiff herein being only required to print the papers pertaining to this cross-appeal, to be added to such transcript.

IT IS FURTHER ORDERED that the bond on cross-appeal be fixed in the sum of Two Hundred Fifty Dollars (\$250.00) to act as a bond for costs on cross-appeal.

DATED this 24th day of October, 1934.

Paul J. McCormick
United States District Judge

[Endorsed]: Filed Oct 24, 1934 R. S. Zimmerman,
Clerk By L. Wayne Thomas, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

STIPULATION WAIVING BOND ON CROSS-
APPEAL

IT IS STIPULATED AND AGREED by and between the parties to the above entitled suit through their respective attorneys that the Cost Bond on Cross-Appeal be and the same is hereby waived.

DATED at Los Angeles, California, this 31st day of October, 1934.

Frank L. A. Graham
Attorney for Plaintiff

Lyon & Lyon
Lewis E. Lyon
Attorneys for Defendant.

IT IS SO ORDERED

Paul J. McCormick
Judge

[Endorsed]: Filed Nov. 1, 1934. R. S. Zimmerman,
Clerk By L. Wayne Thomas Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

STIPULATION PROVIDING FOR THE FILING OF
ALL ORIGINAL EXHIBITS WITH THE
CLERK OF THE CIRCUIT COURT OF AP-
PEALS.

IT IS HEREBY STIPULATED AND AGREED by
and between the parties hereto that the Clerk of the Dis-
trict Court, at the expense of defendant-appellant, file all
of the original exhibits, both documentary and physical,
with the Clerk of the Circuit Court of Appeals for the
Ninth Circuit; said exhibits to be present in the Court of
Appeals at the time of the hearing of this appeal for the
use of both parties therein.

DATED this 27th day of February, 1935.

Frank L. A. Graham

Attorney for Plaintiff

Lyon & Lyon

Lewis E. Lyon

Henry S. Richmond

Attorneys for Defendant

[Endorsed]: Filed Mar 1—1935 R. S. Zimmerman,
Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

AMENDED PRAECIPE.

TO THE CLERK OF THE COURT:

WE HEREBY RESPECTFULLY REQUEST you to make a transcript of the record in the above entitled suit to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit pursuant to Appeal heretofore allowed to defendant and include in such transcript of record the following:—

1. Bill of Complaint filed July 11, 1933.
2. Defendant's Motion for Bill of Particulars and extension of time for Answer, filed August 15, 1933.
3. Defendant's Notice of above Motion filed August 15, 1933.
4. Order extending time to answer entered August 15, 1933.
5. Bill of Particulars filed September 25, 1933.
6. Answer filed October 26, 1933.
7. Notice and Motion for reference to Special Master, filed March 28, 1934.
8. Affidavit of George E. Barnhart in support of Motion for Reference, filed March 28, 1934.
9. Order of Reference dated April 5, 1934.
10. Notice of setting for trial dated May 4, 1934.
11. Stipulation dated May 19, 1934.

12. Narrative Statement of Testimony lodged October 24, 1934, and as corrected and amended and agreed upon by the parties hereto.
13. Notice of Lodgment of Narrative Statement of Testimony filed October 23, 1934.
14. Report of Special Master, David B. Head, filed August 10, 1934.
15. Defendant's Exceptions to the report of the Special Master, filed August 15, 1934.
16. Plaintiff's Exceptions to Master's Report filed August 19, 1934.
17. Stipulation adopting Master's Report as Findings of Fact and Conclusions of Law, dated and filed September 21, 1934.
18. Interlocutory Decree entered September 23, 1934.
19. Petition for Appeal filed October 23, 1934.
20. Order allowing Appeal entered October 23, 1934.
21. Assignment of Errors filed October 23, 1934.
22. Notice of Appeal filed October 23, 1934.
23. Citation issued October 23, 1934.
24. Appeal Bond approved and filed October 23, 1934.
25. Defendant's Motion for Bill of Particulars (omitting the affidavit attached thereto.)
26. Stipulation re Book of Exhibits and physical exhibits.
27. Petition for Cross Appeal.

28. Order allowing Cross-Appeal.
29. Citation on Cross-Appeal.
30. Assignment of Errors on Cross-Appeal.
31. Stipulation waiving bond on Cross-Appeal.
32. This Amended Praecipe.

IT IS HEREBY STIPULATED by and between the parties hereto that plaintiff and defendant's praecipis heretofore filed herein be withdrawn, and that this Amended Praecipe be filed in place thereof and shall constitute the praecipe for the record in both the appeal and the cross-appeal.

DATED at Los Angeles, California, this 27th day of February, 1934.

Lyon & Lyon

Lewis E. Lyon

Henry S. Richmond

Attorneys for Defendant.

Frank L. A. Graham

Attorney for Plaintiff.

[Endorsed]: Filed Mar 1—1935 R. S. Zimmerman,
Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 186 pages, numbered from 1 to 186 inclusive, together with Volume II (Book of Exhibits), to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; citation on cross-appeal; bill of complaint; defendant's motion for bill of particulars and extension of time for answer; notice of motion for bill of particulars; order extending time to answer; bill of particulars; answer; notice and motion for reference to Special Master and affidavit of George E. Barnhart in support of motion for reference; order of reference; notice of setting; stipulation dated May 19, 1934; statement of evidence; notice of lodgment of statement of testimony; report of special master; defendant's exceptions to the report of the Special Master; plaintiff's exceptions to Master's Report; stipulation adopting Master's Report as findings of fact and conclusions of law; interlocutory decree; petition for appeal; assignment of errors; order allowing appeal; notice of appeal; bond on appeal; petition for cross-appeal; assignments of error on cross-appeal; order allowing cross-appeal; stipulation waiving bond on cross-appeal; stipulation providing for the

filing of all original exhibits with the clerk of the Circuit Court of Appeals; and amended praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$ and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to..... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of March, in the year of Our Lord One Thousand Nine Hundred and Thirty-five and of our Independence the One Hundred and Fifty-ninth.

R. S. ZIMMERMAN,
Clerk of the District Court of the
United States of America, in
and for the Southern District
of California.

By

Deputy.